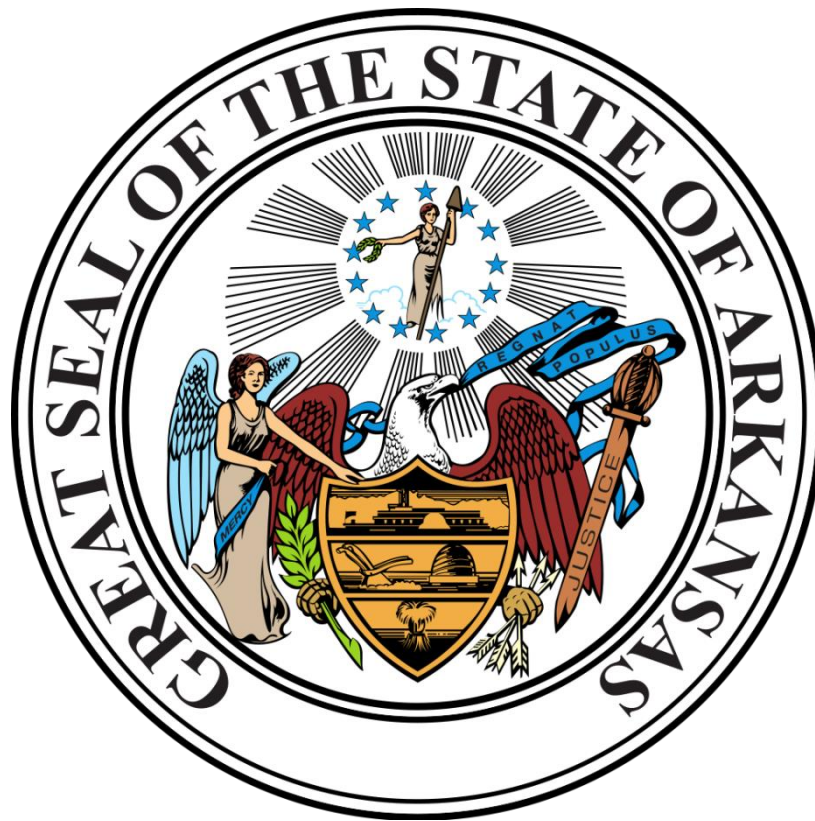


Arkansas Circuit Courts

Judges' Benchbook

Juvenile Division



The Administrative Office of the Courts

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Little Rock, AR 72201

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<https://courts.arkansas.gov/>

Updated May 2014

Welcome to the updated Circuit Court Judges' Benchbook for the Juvenile Division. We are pleased to provide you with this up-to-date resource that we hope will aid you in your legal research and decision-making.

The new format of the Benchbook lends itself to both hardcopy and digital formats. To make the most of this Benchbook, we suggest that you utilize the embedded links to cases, court rules, and other resources. In order to access the case law, you will need to sign in to your Fastcase account using your Arkansas Bar Association log in. It is easy to do. You will need to repeat this process each session that you use the Benchbook. You may consider "bookmarking" these links for future reference. If you do not have access to Fastcase because you are not a member of the Arkansas Bar, find out more about becoming a member at https://www.arkbar.com/pages/Join_Renew_Membership_Online.aspx.

First, go to <https://www.arkbar.com/> and click on "Fastcase."

Then, sign in using your log in information.

Click "Fastcase" one more time, and you will be logged in.

You are now ready to use the links in the Benchbook.

Without closing out your browser, open the Benchbook, which can be found at <https://courts.arkansas.gov/administration/education/publications>.

When you click on a case, it should take you straight to Fastcase.

Note: You will continue to be signed in to Fastcase as long as your browser remains open. If you close out of your browser, you will need to sign in to Fastcase again through the arkbar.com website.

Please note that Fastcase has not yet updated the Arkansas Code with the changes from the 2013 legislative session, so there are not any hyperlinks to online statutes in the Benchbook. They will be added and the Benchbook republished as soon as they become available. To search for statutes online, you will need to use the General Assembly's website.

First, go to <http://www.lexisnexis.com/hottopics/arcodes/Default.asp>.

Then, type in the statute call numbers and press enter.

(For example, "9-27-315" will take you to the statute for Emergency Orders.)

As always, the staff at the Administrative Office of the Courts is here to help. If you have any questions, please contact:

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Thank you and enjoy!

Click on the Chapter Heading to
jump directly to the designated page.

Table of Contents

I. JUVENILE COURT PERSONNEL	1
Juvenile Division Judges	1
Juvenile Intake Officers.....	1
Juvenile Probation Officers	2
Juvenile Officer Certification Standards	4
Dual Role Precluded	4
Personnel Contracts.....	4
Probation and Intake Officers' Salaries	5
State Funding.....	5
Counties Sharing Cost.....	5
State reimbursement.....	5
II. CIRCUIT COURT JURISDICTION	7
Delinquent Juveniles	7
Criminal and Juvenile Division Transfers	8
Extended Jurisdiction Juveniles	11
Family in Need of Services (FINS)	12
Dependent-Neglected Juveniles	13
Dependent Juveniles.....	20
Emergency Custody/72-Hour Hold.....	21
Termination of Parental Rights.....	21
DHS Custody.....	21
Adoption	21
Guardianship	21
Permanent Custody	22
Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).....	22
Arkansas Supreme Court Administrative Order No. 14.....	23
No Jurisdiction.....	24
III. DISTRICT COURT JURISDICTION OF JUVENILES	25
Curfew Violations	25
Traffic Offenses	25
Game & Fish Violations.....	25

IV. PETITIONERS, PETITIONS, VENUE & TRANSFERS	26
Petitioners	26
Delinquency	26
Defendants.....	26
Intervention.....	27
Contents of Petition	28
Filing Petition	28
Notification.....	29
Venue.....	29
Case Transfers	30
V. TAKING INTO CUSTODY	31
Alleged Delinquent Juvenile.....	31
With Warrant	31
Without Warrant	31
Mandatory Detention.....	31
Alleged Felony.....	32
Alleged Misdemeanor.....	33
Custody Restrictions	33
Juvenile Statements.....	33
Juvenile Release from Custody	34
Juvenile Witness	34
Questioning Juveniles	34
Fingerprinting & Photographing	36
Custody of Alleged Dependent-Neglected Juvenile	37
Custody of Alleged FINS.....	38
FINS Custody Options	38
Limitation on the Detention of FINS.....	39
DHS Custody Solely Because of Actions of Someone Other than Custodial Parent.....	39
VI. EMERGENCY EX PARTE ORDERS.....	40
Ex Parte Order	40
Ex Parte Order Notice	41
Appointment of Parent Counsel	42

Appointment of Attorney Ad Litem	42
Federal IV-E Findings Required	42
VII. RIGHT TO COUNSEL	43
Alleged Juvenile Delinquents’ and FINS’ Right to Counsel	43
EJJ Offenders’ Right to Counsel	43
Appointed Counsel	43
Alleged Dependent-Neglected Juveniles’ Right to Counsel	44
Court Appointed Special Advocate (CASA)	45
Parent’s and Guardian’s Right to Counsel	46
Attorney Fees and Payment	49
VIII. WAIVER OF RIGHT TO COUNSEL	51
Miranda Rights	51
Court Finding	51
Juvenile Waiver of Counsel	54
No Waiver of Counsel	55
Parent Waiver of Counsel	55
IX. DHS CASE PLANS	57
Development	57
Filed with Court	57
Signed and Distribution	58
Modifications	58
Case Plan Contents for In-Home Services	58
Case Plan Contents for Out-of-Home Placement Services	58
Court Approval Required	61
Participation Not Admission	61
X. DIVERSION	62
Diversion Requirements	62
Delinquency Diversion	62
FINS Diversion	62
Diversion Conditions	62
Diversion Agreement Terms	62
Diversion Fee	63

Diversion Agreement Termination.....	64
Petition.....	64
Satisfactory Diversion Completion.....	64
XI. DETENTION.....	66
Time Constraints	66
Detention Limitations.....	66
FINS Detention Exceptions.....	67
Detention Release	69
XII. HEARINGS OVERVIEW	70
Notice of Hearing	70
Right To Jury	71
Pleadings & Notice of Appearance	71
Defendants & Witnesses.....	72
Court of Record	72
Rules.....	72
Burden of Proof	73
Preponderance of the Evidence	73
Clear and Convincing Evidence	73
Beyond a Reasonable Doubt.....	73
Open v. Closed Hearings.....	73
Foster Parents, Preadoptive and Custodial Parents' and Relative Rights.....	74
72-Hour Hold.....	75
Fitness to Proceed.....	76
Defenses	76
Double Jeopardy	76
Admissibility of Evidence	76
Home Studies	77
Drug Testing	77
Interstate Compact Placement of Children (ICPC)	77
Mediation	79
Arkansas Youth Mediation Program.....	79
XIII. DELINQUENCY PROCEEDINGS	81

Detention Hearings.....	81
Purpose	81
Notice	81
Time Constraints.....	81
Burden of Proof.....	81
Court’s Duties	81
DHS Investigation	83
Modification Order	84
Transfer Hearings.....	84
Purpose	84
Motion to Transfer.....	85
Time Constraints.....	85
Burden of Proof.....	85
Transfer Hearing Factors.....	85
Transfer Hearing Constitutional Challenges	89
Court Findings.....	90
Bail or Bond.....	91
Appeal.....	91
Adjudication	93
Purpose	93
Time Constraints.....	93
Rules	93
Burden of Proof.....	95
Confessions - Court Finding.....	95
Fitness to Proceed	96
Defenses.....	97
Delinquency Adjudication Subject to Sex & Child Offender Assessment.....	97
Court Ordered Safety Plans Mandated to Schools	98
Delinquency Adjudications Subject to DNA Samples	98
Studies & Reports.....	99
Delinquency Cases	99
Brady Violations	99

Closing Argument.....	99
Rape Shield.....	99
First Amendment – Threat	100
Accomplice	100
Victim Evidence.....	101
Sufficiency of the Evidence.....	101
Appealable Order.....	107
Delinquency Dispositions.....	107
Purpose	107
Time Constraints.....	107
Evidence.....	108
Delinquency Disposition Alternatives	108
Transfer Legal Custody	108
DYS Commitment	109
Order Evaluations	112
Permanent Custody.....	112
Probation	112
Probation Fee.....	113
Court Cost.....	113
Restitution	114
Fine	116
Community Service	116
Parent Training.....	116
Detention	117
Electronic Monitoring - Residential Detention.....	117
Cost for Commitment, Detention or Electronic Monitoring	117
Suspend Driving Privileges.....	118
Medical Information to DYS or Detention	118
Jurisdiction.....	118
Delinquency Dispositions for Weapon Adjudications	118
Delinquency Disposition for Escape Adjudications.....	118
Sex Offender Registration Hearing	119

Purpose	119
Time Constraints.....	119
Petition	119
Right To Counsel.....	119
Burden of Proof.....	119
Registration Hearing Factors.....	119
Court Findings.....	120
Registration Process	121
Registration Removal	122
Revocation of Probation Hearings	122
Purpose	122
Time Constraints.....	123
Petition	123
Burden of Proof.....	123
Court’s Options.....	123
DYS Aftercare Revocation Hearings.....	124
Purpose	124
Terms and Conditions	124
Time Constraints.....	125
Petition	125
Burden of Proof.....	125
Court’s Options	125
XIV. EXTENDED JUVENILE JURISDICTION (EJJ) PROCEEDINGS.....	127
Extended Juvenile Jurisdiction (EJJ) Designation.....	127
Right to Counsel.....	129
Competency: Fitness to Proceed – Lack of Capacity.....	129
Evaluation	129
Time Constraints.....	133
Fitness to Proceed & Capacity Proceedings.....	133
Designation Hearing.....	135
Time Constraints.....	135
Burden of Proof.....	136

Designation Factors.....	136
Court’s Findings	137
Appeal.....	137
Extended Juvenile Jurisdiction (EJJ) Adjudication & Disposition Hearings	138
Jury Trial.....	138
Time Constraints.....	138
Burden of Proof.....	138
EJJ Adjudication	138
Extended Juvenile Jurisdiction Court Review Hearing	139
Adult Sentence Petition	139
Court Disposition.....	139
Review and Modification of EJJ Disposition	140
Release.....	141
Extended Juvenile Jurisdiction (EJJ) Records	142
XV. FAMILIES IN NEED OF SERVICES (FINS) PROCEEDINGS	143
Probable Cause Hearings	143
Purpose	143
Notice.....	144
Time Constraints.....	145
Hearing Limitations	145
Burden of Proof.....	145
Juvenile’s Right to Counsel.....	145
Court Findings.....	146
Federal IV-E Adoption Safe Families Act (ASFA) Initial Removal Finding.....	147
FINS Adjudication Hearings	149
Purpose	149
Juvenile’s Right to Counsel.....	149
Studies & Reports.....	150
FINS Disposition Hearings.....	150
Purpose	150
Evidence.....	150
FINS Disposition Alternatives	150

Requirements Prior to Removing a Juvenile from Home.....	157
Transfer Custody.....	159
Parent Training.....	161
Electronic Monitoring - Residential Detention.....	161
Community Service	161
Supervision Terms.....	161
Fine	162
Assess Court Cost.....	162
Order Juvenile Service Fee	162
Contempt Sanctions	163
Six-Month Review Hearings	163
Purpose.....	163
Time Constraints	164
Court Review Findings	164
XVI. DEPENDENCY-NEGLECT PROCEEDINGS	166
Probable Cause Hearings	166
Purpose	166
Notice	167
Time Constraints	168
Hearing Limitations	168
Burden of Proof.....	169
Court Findings.....	169
Federal IV-E Adoption Safe Families Act (ASFA) Initial Removal Finding.....	170
Dependency-Neglect Adjudication Hearings.....	170
Purpose	170
Dependent – Appropriate Relative	170
Neglect.....	170
Neglect – Parental Unfitness.....	174
Physical Abuse	174
Sex Abuse	176
Siblings.....	177
Second Adjudication – Same Issue	177

Time Constraints.....	178
Burden of Proof.....	179
Evidence.....	179
Hearing Limitations	181
Studies & Reports.....	181
Dependency-Neglect Disposition Hearings	181
Purpose	181
Time Constraints.....	181
Evidence.....	182
Required Reasonable Efforts - Adoption Safe Families Act (ASFA) - 60 Day Findings	182
Dependency-Neglect Disposition Alternatives	182
Family Services	182
Requirements Prior to Removing a Juvenile from Home.....	186
Transfer Custody.....	188
Parent Training.....	189
Contempt Sanctions	189
No Reunification Efforts Hearings	189
Purpose	189
Time Constraints.....	190
Notice	190
Burden of Proof.....	190
Court Finding	191
Six-Month Review Hearings	193
Purpose	193
Time Constraints.....	193
Court Reports	194
Court Review Findings.....	194
Custody Termination	196
Permanency Planning Hearing	197
Purpose	197
Time Constraints.....	197

Court Reports	198
Court Findings - Permanency Plans	199
Custody with Fit Parent	199
Return Custody	200
Plan to Return Home IF	200
Plan for Adoption	202
Authorize Plan for Guardianship	202
Authorize Plan for Custody	203
APPLA only IF	205
Required Reasonable Efforts - Adoption Safe Families Act (ASFA) Findings.....	205
Fifteenth-Month Review Hearing.....	206
Purpose	206
Time Constraints.....	206
Court Findings.....	206
Foster Youth Transition Plan Hearings.....	207
Purpose	207
Time Constraints.....	208
Notice	209
Transition Plan.....	209
Court Finding	209
Termination of Parental Rights (TPR) Hearing.....	210
Purpose	210
Time Constraints.....	211
Notice	215
TPR Petition	217
Burden of Proof.....	218
TPR Evidence	218
Constitutional Issues	219
Relative Placement	220
Adoptability.....	221
Potential Harm	225
Americans with Disabilities Act Accommodations.....	260

Effect of TPR Order	267
Post-Termination of Parental Rights Review Hearings.....	269
Purpose	269
Time Constraints.....	269
Court Reports	270
Court Findings.....	271
XVII. APPEALS.....	272
Generally.....	272
Delinquency.....	272
Waiver & Transfers.....	273
Dependency-Neglect Appeals	274
Time Constraints	274
Procedure for No Merit Petitions, Pro Se Points, and State’s Response	277
Trial Counsel’s Duties.....	281
Out-of-Home Placements	282
XVIII. FEES, COSTS, FINES AND RESTITUTION	283
Fees	283
Attorneys’ Fees	283
Court Costs	283
Probation Fee.....	283
Juvenile Diversion Fee	283
Juvenile Service Fee.....	284
Family Services	284
Circuit Court Juvenile Division Fund.....	285
Restitution.....	286
Fines.....	287
Nonpayment of Restitution, Fines and Court Costs	287
Burden of proof.....	287
XIX. MISCELLANEOUS	289
Educational Rights of Foster Children.....	289
Foster Care School Notification.....	290
Foster Care Placements	291

Juvenile Mental Health Screening/Assessment Requirements	292
Mental Health Assessments Required for Out-of-State Residential Placements	293
Emancipation of Juveniles.....	294
Effect of an Order of Emancipation	295
<u>Index</u>	297

I. JUVENILE COURT PERSONNEL

Juvenile Division Judges

Shall be designated to hear juvenile cases pursuant to Supreme Court Administrative Order Number 14. [Administrative Order Number 14.](#)

Shall designate no fewer than one (1) person in his or her judicial district as intake officer for the court. [Ark. Code Ann. § 9-27-308\(a\)\(1\).](#)

The intake officer shall be certified and must complete initial certification requirements within one (1) year of the officer's employment and must maintain the certification during the terms of his or her employment. [Ark. Code Ann. § 16-13-328\(c\)\(1\).](#)

Shall designate no fewer than one (1) person in his or her judicial district as probation officer. [Ark. Code Ann. § 9-27-308\(b\)\(1\).](#)

The probation officer shall be certified and must complete initial certification requirements within one (1) year of the officer's employment and must maintain the certification during the terms of his or her employment. [Ark. Code Ann. § 16-13-327\(c\)\(1\).](#)

Shall immediately report to the child abuse hotline (1-800-482-5964) if he or she has reasonable cause to suspect that a child has been subjected to child maltreatment, has died as a result of child maltreatment, or has observed a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. [Ark. Code Ann. § 12-18-402\(a\).](#)

Juvenile Intake Officers

Shall receive and investigate complaints and charges that a juvenile is delinquent, dependent-neglected, or FINS. [Ark. Code Ann. § 9-27-308\(a\)\(2\)\(A\)\(i\).](#)

Shall make appropriate referrals to other public or private agencies of the community if assistance is needed or desired. [Ark. Code Ann. § 9-27-308\(a\)\(2\)\(A\)\(ii\).](#)

Shall perform other functions assigned by code, rules, or court. [Ark. Code Ann. § 9-27-308\(a\)\(2\)\(A\)\(iii\).](#)

Shall conduct preliminary investigation upon receiving notice that a juvenile has been taken into custody on allegation of delinquency. [Ark. Code Ann. § 9-27-324\(a\).](#)

Shall immediately notify the central intake (Hotline) at DHS when he or she has reasonable cause to suspect that a juvenile has been subjected to maltreatment as defined by Arkansas Code Annotated section 12-18-103(6). [Ark. Code Ann. § 9-27-308\(a\)\(3\).](#)

Shall advise juvenile and parent at all conferences of the following rights:

- (1) Juvenile's right to counsel and the right to remain silent when questioned by the intake officer. Ark. Code Ann. § 9-27-324(d)(2).
- (2) Juvenile's and parent's right to voluntarily participation in intake conference, and the right to refuse to participate at any time. Ark. Code Ann. § 9-27-324(d)(1).

Shall be notified immediately to make a detention decision within twenty-four (24) hours from time juvenile was first taken into custody. Ark. Code Ann. § 9-27-313(d)(2)(A)(ii).

Shall consult with prosecutor to determine if diversion of a delinquency case is in the best interests of the juvenile and the community and, with the consent of the juvenile and his or her parent, guardian, or custodian, may attempt to make a satisfactory diversion of a case. Ark. Code Ann. § 9-27-323(a).

The intake officer may:

- (1) Interview the complainant, victim, or witnesses of the act and circumstances alleged in the complaint. Ark. Code Ann. § 9-27-324(b)(1).
- (2) Review existing records of court, law enforcement agencies, and public records of other agencies. Ark. Code Ann. § 9-27-324(b)(2).
- (3) Hold conferences with juvenile and parent, guardian, or custodian for the purpose of interviewing them and discussing the disposition of the complaint. Ark. Code Ann. § 9-27-324(b)(3).
- (4) Make additional inquiries only with consent of the juvenile and his or her parent, guardian, or custodian. Ark. Code Ann. § 9-27-324(c).

The Attorney General issued an opinion that stated that there is no statutory authority for juvenile intake and probation officers to prevent and detect crime, or to enforce the criminal traffic or highway laws of the state. Consequently, juvenile probation and intake officers do not fall within the statutory definition of law enforcement officers pursuant to Arkansas Code Annotated section 12-9-102; therefore, they are not authorized to carry firearms. Furthermore, the Arkansas Law Enforcement Training Academy (ALETA) is neither obligated nor authorized to offer firearms training for juvenile intake and probation officers. [Op. Att'y Gen. No. 92-333 \(December 1992\)](#).

Juvenile Probation Officers

Shall make appropriate investigations and reports by code, rules, or court order. Ark. Code Ann. § 9-27-308(b)(2)(A).

Shall make and keep a complete history of each case before disposition and during the course of any probation imposed by the circuit court. Ark. Code Ann. § 9-27-347(a).

Predisposition and probation reports:

- (1) Shall require an intelligent and thorough report of each juvenile before probation and during probation to show condition of juvenile and results of probation. Ark. Code Ann. § 9-27-347(b)(1)-(2).
- (2) Shall contain juvenile's:
 - (A) heredity, environment, condition, treatment, development, and results. Ark. Code Ann. § 9-27-347(b)(1).
 - (B) age, sex, nativity, residence, education, mentality, habits, whether married or single, employment, and income as the condition of the juvenile during probation. Ark. Code Ann. § 9-27-347(b)(2).
- (3) Shall never be disclosed except as required by law or directed by the court. Ark. Code Ann. § 9-27-347(b)(3).

Shall furnish to each person released on probation a written statement of the terms and conditions of probation, shall give the conditions of probation in writing to the juvenile, and shall explain these conditions to juvenile and parent(s) in the initial conference following the disposition hearing. Ark. Code Ann. § 9-27-347(c); Ark. Code Ann. § 9-27-339(a).

Shall report to the juvenile court any violation or breach of the terms and conditions of probation and may report violation or breach to prosecutor. Ark. Code Ann. § 9-27-347(c); Ark. Code Ann. § 9-27-339(b).

Shall aid and counsel juveniles and their families when required by court order. Ark. Code Ann. § 9-27-308(b)(2)(B).

Shall immediately report to the child abuse hotline (1-800-482-5964) when he or she has reasonable cause to suspect that a child has been subjected to child maltreatment, has died as a result of child maltreatment, or observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. Ark. Code Ann. § 12-18-402(a); Ark. Code Ann. § 12-18-402 (b)(28).

Perform other functions assigned by code, rules, or court. Ark. Code Ann. § 9-27-308(b).

Shall give appropriate aid and assistance to court upon request by the judge. Ark. Code Ann. § 9-27-308(b)(2)(D).

The Attorney General issued an opinion that stated that there is no statutory authority for juvenile intake and probation officers to prevent and detect crime, or

to enforce the criminal traffic or highway laws of the state. Consequently, juvenile probation and intake officers do not fall within the statutory definition of law enforcement officers pursuant to Arkansas Code Annotated section 12-9-102; therefore, they are not authorized to carry firearms. Furthermore, the Arkansas Law Enforcement Training Academy (ALETA) is neither obligated nor authorized to offer firearms training for juvenile intake and probation officers. [Op. Att'y Gen. No. 92-333 \(December 1992\)](#).

Juvenile Officer Certification Standards

A juvenile intake and probation officer must:

- (1) Be 21 years of age;
- (2) Be a U.S. citizen;
- (3) Have a B.A. in a related field or equivalent experience working with juveniles for at least one year;
- (4) Attend an AOC approved certification course within the first year of employment;
- (5) Obtain 12 hours of continuing education as authorized by the Circuit Court, Juvenile Division Judges each year after attending the initial certification course; and
- (6) Submit to criminal background checks conducted by the county prior to employment. Standards adopted by Juvenile Officers Standards Committee effective January 1, 1998.

Dual Role Precluded

A person shall not serve as both a probation officer and as an intake officer. [Ark. Code Ann. § 16-13-329](#).

Personnel Contracts

Intake and probation services may be provided by contract between county and community-based provider with approval of the judge or judges of the circuit designated to hear juvenile cases pursuant to Supreme Court Administrative Order Number 14. [Ark. Code Ann. § 16-13-330](#).

Persons providing juvenile intake and probation services by contract shall be certified in same manner as provided for certifying individual intake and probation officers. [Ark. Code Ann. § 16-13-330](#).

Probation and Intake Officers' Salaries

State Funding

State shall pay a portion of the salary of full-time, certified probation and intake officer whose salary has been paid by the county or counties for one (1) year.

State shall pay the lesser of the following:

- (1) \$15,000 a year, or
- (2) one half (1/2) the officer's average salary as calculated over the last twelve (12) months. Ark. Code Ann. § 16-13-327(d); Ark. Code Ann. § 16-13-328(d).

Counties Sharing Cost

County or counties within a judicial district may contract with providers for intake and probation services for the court if

- (1) the judge approves; and
- (2) private contract providers must be certified in same manner as provided for certifying individual intake and probations officers. Ark. Code Ann. § 16-13-330.

Two or more counties, cities, or school districts may agree by compact to share costs of juvenile court personnel or facilities to serve both counties agreeing. Ark. Code Ann. § 9-27-350.

State reimbursement

The State Auditor shall administer the state reimbursement to the counties for the juvenile officers' previous year's salary. Ark. Code Ann. § 16-13-331(a).

The county must submit the following documentation to the State Auditor including, but not limited to:

- (1) Proof of the juvenile officer's certification and continuing legal education hours;
- (2) A copy of the juvenile officer's W-2 form for the salary year that is being reimbursed; and
- (3) A completed form concerning the employment status of the officer which shall be designed and distributed by the Auditor. Ark. Code Ann. § 16-13-331(b).

Counties who contract with a service provider to provide juvenile intake and probation services must submit documentation to the Auditor, including, but not limited to:

- (1) A copy of the contract for the salary year that is being reimbursed;
- (2) A copy of the juvenile officer's certification and continuing education hours;

- (3) A copy of the juvenile officer's W-2 form for the salary year that is being reimbursed; and
- (4) A completed form concerning the employment status of the officer which shall be designed and distributed by the Auditor. Ark. Code Ann. § 16-13-331(c).

Multiple counties in a judicial district may share the cost of the salary of the intake and probation officer.

One county may be designated as the county to be reimbursed by the state, or each county shall designate the portion of the salary that is pays for juvenile intake and probation services. Ark. Code Ann. § 16-13-331(d)(2).

The county may contract with a service provider for full- or part-time juvenile intake and probation officer services.

- (1) The county shall indicate the percentage of the contractor's time that is spent providing intake and probation officer services for the county.
- (2) The county or the contractor shall be reimbursed for one half (1/2) of the portion of the salary that is used for such services, up to \$15,000. Ark. Code Ann. § 16-13-331(d)(3).

II. CIRCUIT COURT JURISDICTION

The assignment of juvenile cases to the juvenile division of circuit court shall be described by Supreme Court Administrative Order Number 14. The circuit court shall have exclusive original jurisdiction and shall be the sole court for the following proceedings, including but not limited to:

Delinquent Juveniles

Proceedings in which a juvenile is alleged to be delinquent, including juveniles ages ten (10) to eighteen (18); however, the court may retain jurisdiction up to the age of twenty-one (21) if the juvenile committed the delinquent act prior to the age of eighteen (18).

Ark. Code Ann. § 9-27-306(a)(1)(A).

Any juvenile ten (10) years or older who has committed an act other than a traffic offense or game and fish violation that, if such act had been committed by an adult, would subject such adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state. Ark. Code Ann. § 9-27-303(15)(A)(i).

Note: No juvenile under the age of ten (10) can be alleged or adjudicated a delinquent.

A juvenile under the age of ten (10) can be brought before the juvenile court as a FINS for delinquent acts. Byler v. State, 306 Ark. 37 (1991).

Any juvenile (no age limit) charged with capital murder or murder in the first degree is subject to extended juvenile jurisdiction. Ark. Code Ann. § 9-27-303(15)(B).

Any juvenile who has violated Arkansas Code Annotated section 5-73-119 (Minor in Possession of a Handgun or Possession on School Property). Ark. Code Ann. § 9-27-303(15)(A)(ii).

Although two juveniles brought a handgun to school which could not be fired because parts were missing, the juvenile judge correctly found that Arkansas Code Annotated sections 5-73-119(a)(1)(A) and (a)(2)(A) refer to the type of ammunition which can be fired from the gun, and not whether the gun itself was at that time capable of being fired. S.T. v. State, 318 Ark. 499 (1994).

Juvenile courts have jurisdiction to adjudicate charges under Arkansas Code Annotated section 5-73-119. The court stated that there was a drafting error in the definition of delinquent juvenile which was corrected by Act 36 of 1994, which added section 5-73-119 to the definition of juvenile delinquent. Rosario v. State, 319 Ark. 764 (1995); Jones v. State, 319 Ark. 762 (1995); Lucas v. State, 319 Ark. 752 (1995).

The Circuit Court usurped prosecutorial constitutional and statutory duties and violated the separation of powers doctrine when it dismissed charges against juvenile defendant sua sponte. [State v. D.S., 2011 Ark. 45.](#)

Criminal and Juvenile Division Transfers

Prosecutor Charging Discretion. A prosecuting attorney may charge a juvenile in the criminal division or in the juvenile division when the juvenile is age fourteen (14) or fifteen (15) at time of alleged act, if the alleged act constitutes:

- (1) Capital murder;
- (2) Murder in the first degree;
- (3) Kidnapping;
- (4) Aggravated robbery;
- (5) Rape;
- (6) First-degree battery; or
- (7) Terroristic act. [Ark. Code Ann. § 9-27-318\(c\)\(2\).](#)

Subject matter jurisdiction is based on the pleadings, not the proof. [Jensen v. State, 328 Ark. 349 \(1997\).](#)

Circuit court was affirmed in dismissing the felony information charging a 15-year-old juvenile with one count of burglary (Class B felony) and one count of theft of property valued over \$200 (Class C felony) for lack of jurisdiction. [State v. Gray, 319 Ark. 356 \(1995\).](#)

The Arkansas Supreme Court held that circuit court has jurisdiction only in those specific cases set out in the Juvenile Code as cognizable in adult court when defendant is fourteen or fifteen, and that other charges must be heard in juvenile division court. [Banks v. State, 306 Ark. 273 \(1991\).](#)

A prosecuting attorney may charge a juvenile at least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony. [Ark. Code Ann. § 9-27-318\(c\)\(1\).](#)

Since the state never filed a felony charge by information or indictment against the sixteen-year-old juvenile, the circuit court had no jurisdiction over the criminal charge. [Whitehead v. State, 316 Ark. 563 \(1994\).](#)

If a prosecuting attorney can file charges in the criminal division of circuit court for an act allegedly committed by a juvenile, the state may file any other criminal charges that arise out of same act or course of conduct in the same division case if, after a hearing

before the juvenile division of circuit court, a transfer is ordered. Ark. Code Ann. § 9-27-318(d).

The circuit court, criminal division had jurisdiction of the felony charges, but did not have jurisdiction of the misdemeanor charges. K.O.P. v. State, 2013 Ark. App. 667.

Where the three theft charges filed against appellant were not among those enumerated in Arkansas Code Annotated section 9-27-318(b)(1), and where the prosecutor did not file the charges in juvenile court and then move to transfer them to circuit court, the circuit court never had jurisdiction of those charges; therefore, the three counts of theft of property filed against appellant in circuit court were dismissed. Butler v. State, 324 Ark. 476 (1996).

When a juvenile is tried for an offense over which the circuit court has jurisdiction, the court does not lose jurisdiction by the jury's convicting of a lesser included offense, even if the lesser included is not one with which he could have been charged originally as an adult. Walker v. State, 309 Ark. 23 (1992).

The state may file a motion in juvenile division to transfer a case to the criminal division if a juvenile is fourteen (14) or fifteen (15) years old when he or she engages in conduct that if committed by an adult would be as follows:

- (1) Second-degree murder;
- (2) Second-degree battery;
- (3) Possession of a handgun on school property;
- (4) Aggravated assault;
- (5) Unlawful discharge of a firearm from a vehicle;
- (6) Any felony committed while armed with a firearm;
- (7) Soliciting a minor to join a criminal street gang;
- (8) Criminal use of prohibited weapons;
- (9) First-degree escape;
- (10) Second-degree escape; or
- (11) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:
 - (A) Capital murder;

- (B) First-degree murder;
 - (C) Second-degree murder;
 - (D) Kidnapping;
 - (E) Aggravated robbery;
 - (F) Rape;
 - (G) First-degree battery;
 - (H) First-degree escape; and
 - (I) Second-degree escape. Ark. Code Ann. § 9-27-318(b)(1).
- (12) Possession of handgun on school property if it constitutes a felony under Arkansas Code Annotated section 5-73-119(a). Ark. Code Ann. § 9-27-318(b)(2).
- (13) At least fourteen (14) years old when engaged in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two (2) years, three (3) times been adjudicated as a delinquent juvenile for acts that would have constituted felonies if they had been committed by an adult. Ark. Code Ann. § 9-27-318(b)(3).

Upon a finding by clear and convincing evidence that a case should be transferred to another division of circuit court, the judge shall enter an order to that effect. Ark. Code Ann. § 9-27-318(h)(2).

Although the criminal division obtained jurisdiction in this case originally, when it transferred the case to the juvenile division, it relinquished its exclusive jurisdiction to the juvenile division. “To find otherwise would allow both the criminal division and the juvenile division to exercise exclusive jurisdiction, occasioning the “calamitous results” that the concurrent-jurisdiction rule seeks to avoid.” The criminal division lacked the authority to set aside the transfer order. No provision in the Juvenile Code grants authority to a division to set aside its order transferring a juvenile defendant to another division and Arkansas Rule of Civil Procedure 60 does not apply in criminal cases, including juvenile delinquency cases. [C.H. v. State, 2010 Ark 279](#).

After the circuit court transferred the juvenile to the juvenile court, the State filed a motion for reconsideration. Stating that it had entered the transfer order based on inaccurate information, the circuit court entered an order rescinding its prior transfer order and retaining jurisdiction over the juvenile. The Supreme Court held that the circuit court, criminal division lacked jurisdiction to enter the set-aside order, and therefore we dismissed the appeal. The State failed to pursue the

proper remedy by filing a direct and timely appeal of the transfer order. [Thomas v. State, 345 Ark. 236 \(2001\).](#)

Upon a finding by the criminal division of circuit court that a juvenile ages fourteen (14) through seventeen (17) should be transferred to the juvenile division of circuit court, the criminal division of circuit court may enter an order to transfer the juvenile as an extended juvenile jurisdiction offender. [Ark. Code Ann. § 9-27-318\(i\).](#)

If a juvenile age fourteen (14) or fifteen (15) is found guilty in the criminal division for an offense other than an offense in subdivision (b) or (c)(2), the criminal division shall enter a juvenile delinquency disposition pursuant to Arkansas Code Annotated section 9-27-330. [Ark. Code Ann. § 9-27-318\(j\).](#)

Extended Jurisdiction Juveniles

Proceedings in which the juvenile is alleged to be an extended juvenile jurisdiction (EJJ) offender, pursuant to Arkansas Code Annotated sections 9-27-501 et seq. [Ark. Code Ann. § 9-27-306\(a\)\(1\)\(G\).](#)

Any juvenile age thirteen (13) and under and charged with capital murder or first-degree murder. [Ark. Code Ann. § 9-27-501\(a\)\(1\)-\(2\).](#)

Any juvenile ages fourteen (14) through seventeen (17) at the time of the alleged conduct and charged with the following crimes:

- (1) Second-degree murder;
- (2) Second-degree battery;
- (3) Possession of handgun on school property;
- (4) Aggravated assault;
- (5) Unlawful discharge of a firearm from a vehicle;
- (6) Any felony committed while armed with a firearm;
- (7) Soliciting a minor to join a criminal street gang;
- (8) Criminal use of a prohibited weapon;
- (9) First-degree escape;
- (10) Second-degree escape; or
- (11) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:
 - (A) capital murder;

- (B) first-degree murder;
- (C) second-degree murder;
- (D) kidnapping;
- (E) aggravated robbery;
- (F) rape;
- (G) first-degree battery;
- (H) first-degree escape; and
- (I) second-degree escape. Ark Code Ann. § 9-27-501(a)(3)-(4); Ark Code Ann. § 9-27-318(b)(1).

Juveniles age fourteen (14) through seventeen (17) at the time of the alleged offense and charged with the following crimes:

- (1) Capital murder;
- (2) First-degree murder;
- (3) Kidnapping;
- (4) Aggravated robbery;
- (5) Rape;
- (6) First-degree battery; and
- (7) Terroristic act. Ark Code Ann. § 9-27-501(a)(3)-(4); Ark. Code Ann. § 9-27-318(c)(2).

The criminal division of the circuit court may enter an order to transfer the case as an EJJ case upon a finding that a juvenile ages fourteen (14) through seventeen (17) and charged with the crimes in Arkansas Code Annotated section 9-27-318(c)(2) should be transferred to the juvenile division of circuit court. Ark. Code Ann. § 9-27-318(i).

Family in Need of Services (FINS)

Proceedings in which a family is alleged to be in need of services as defined by this subchapter, which shall include juveniles from birth to eighteen (18), except for a juvenile who has been adjudicated a FINS and who is in foster care before age eighteen (18) may request the court to continue jurisdiction until the age of twenty-one (21): if the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month toward self-sufficiency to receive independent living or transitional services. However, the court shall retain jurisdiction only if the juvenile

remains or has a viable plan to remain in instruction or treatment to receive independent living services. The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from the instruction or treatment to receive independent living services. Ark. Code Ann. § 9-27-306(a)(1)(D).

The court acted without jurisdiction to hold the appellant in contempt for failure to abide by a no-contact order after the appellant reached the age of 18 because the court lacked jurisdiction related to the original FINS petition. Although punishment for contempt is an inherent power of the court, it must be based on a valid court order of a court having jurisdiction. [Black v. State, 2010 Ark. App. 78.](#)

FINS means any family with a juvenile who evidences behavior that includes, but is not limited to, being a truant, a runaway, or habitually disobedient to the reasonable and lawful commands of his parents. Ark. Code Ann. § 9-27-303(24).

Upon notification by the school district or adult education program that a student has exceeded the number of unexcused absences, the prosecuting authority shall:

- (1) File a FINS petition pursuant to Ark. Code Ann. § 9-27-310; or
- (2) Enter a diversion agreement pursuant to Ark. Code Ann. § 9-27-323. Ark. Code Ann. § 6-18-222(a)(6)(A).

FINS include delinquent acts of children under the age of ten (10). [Byler v. State, 306 Ark. 37, 810 S.W.2d 941 \(1991\).](#)

Dependent-Neglected Juveniles

Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18), except a juvenile adjudicated prior to the age of eighteen (18) may request the court to continue jurisdiction until the age of twenty-one (21) as long as the juvenile engages in a course of treatment or instruction, or is working at least eighty (80) hours a month toward gaining self-sufficiency. Ark. Code Ann. § 9-27-306(a)(1)(B)(i).

If a juvenile was adjudicated dependent or dependent-neglected, was in foster care at eighteen (18) years of age, left foster care but decided to return prior to the age of twenty-one (21) to benefit from independent living or transitional services, or left foster care but decided to submit to the jurisdiction of the court and return to foster care to receive transitional services, the juvenile may contact his or her AAL to petition the court to return to the court's jurisdiction to receive independent living or transitional services. Ark. Code Ann. § 9-27-306(a)(1)(B)(ii).

Dependent-neglected juvenile means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: abandonment, abuse, sexual abuse, sexual exploitation, neglect, parental

unfitness, or being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of the parent, guardian, or custodian. [Ark. Code Ann. § 9-27-303\(18\)\(A\).](#)

DHS filed a petition for writ of certiorari arguing that the trial court exceeded its jurisdiction when it split legal and physical custody between a maternal grandmother and DHS following an adjudication hearing. The Court stated that DHS confused the court's jurisdiction, which is a court's ability to act, with a court's error in interpreting a statute. Jurisdiction is the power of the court to hear and determine the subject matter in controversy between the parties. The trial court had jurisdiction to enter an order establishing custody. The proper subject of an appeal is whether the court correctly interpreted the statute in making its custody decision. The writ of certiorari was denied. [Ark. Dep't of Human Servs. v. Sebastian Cnty. Cir. Ct., 363 Ark. 389 \(2005\).](#)

The trial court was reversed for failure to adjudicate the siblings of a child who was found dependent-neglected. Evidence included a severe whipping, pouring salt into the wounds, keeping the child in the same pair of underwear for two days while bleeding and oozing caused his underwear to stick to his rear, and failure to seek medical care. The child abuse of one child demonstrated parental unfitness that put the other siblings at substantial risk of harm. [Ark. Dep't of Human Servs. v. McDonald, 80 Ark. App. 104 \(2002\).](#)

A dependent-neglected child is one who is at risk of serious harm from an unfit parent and such unfitness is not necessarily predicated upon the parent actually causing some direct injury to the child in question. Further, the juvenile court is a court of competent jurisdiction to determine that a parent committed a serious felony assault that results in serious bodily injury. [Brewer v. Ark. Dep't of Human Servs., 71 Ark. App. 364 \(2001\)](#) (substituted opinion on grant of rehearing).

Juvenile courts have exclusive original jurisdiction for proceedings in which a juvenile is alleged to be dependent-neglected. The juvenile code provides that petitions for dependency-neglect may be filed by any adult. Although appellant argued that the juvenile courts were not intended to assume jurisdiction over ordinary custody matters, the appellate court noted that the allegations of dependency-neglect separated the case from those involving ordinary custody matters. The trial judge was correct in reasoning that the consolidation of the three divorce proceedings with the juvenile action was appropriate to prevent conflicting custody orders within the same judicial district. [Lowell v. Lowell, 55 Ark. App. 211 \(1996\).](#)

Abandonment means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact when the

failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, failure to support or maintain regular contact with the juvenile without just cause, or an articulated intent to forego parental responsibility. Ark. Code Ann. § 9-27-303(2).

Abandoned Infant means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant. Ark. Code Ann. § 9-27-303(1).

Abuse means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) or older living in the home with a child, whether related or unrelated, or any person entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

- (1) Extreme or repeated cruelty to a juvenile, Ark. Code Ann. § 9-27-303(3)(A)(i);
- (2) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ, Ark. Code Ann. § 9-27-303(3)(A)(ii);
- (3) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior, Ark. Code Ann. § 9-27-303(3)(A)(iii);
- (4) Any injury which is at variance with the history given, Ark. Code Ann. § 9-27-303(3)(A)(iv);
- (5) Any nonaccidental physical injury, Ark. Code Ann. § 9-27-303(3)(A)(v);
- (6) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:
 - (A) Throwing, kicking, burning, biting or cutting a child;
 - (B) Striking a child with a closed fist;
 - (C) Shaking a child; or
 - (D) Striking a child on the face. Ark. Code Ann. § 9-27-303(3)(A)(vi).
- (7) Any of the following intentional or knowing acts, with or without physical injury:
 - (A) Striking a child age six (6) or younger on the face or head;

- (B) Shaking a child age three (3) or younger;
 - (C) Interfering with a child's breathing;
 - (D) Urinating or defecating on a child;
 - (E) Pinching, biting, or striking a child in the genital area;
 - (F) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
 - (G) Giving or permitting a child to consume or inhale a poisonous or noxious substances not prescribed by a doctor that has the capacity to interfere with normal physiological functions;
 - (H) Giving or permitting a child to consume or inhale a substance not prescribed by a doctor that has the capacity to alter the mood including but not limited to: marijuana, alcohol (excluding alcohol recognized religious ceremony or service), narcotics, or over-the-counter drugs purposely administered as an overdose or inappropriately given so the child is detrimentally impacted;
 - (I) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used during the manufacture of methamphetamine;
 - (J) Subjecting a child to Munchausen syndrome by proxy when reported and confirmed by medical personnel or a medical facility. Ark. Code Ann. § 9-27-303(3)(A)(vii).
- (8) This list is illustrative of unreasonable action and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. Ark. Code Ann. § 9-27-303(3)(B).
- (9) "Abuse" shall not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. It is not abuse when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:
- (A) The person exercising the restraint is an employee of an a residential child care facility licensed or exempted from licensure under the Child Welfare Licensing Act;
 - (B) The person exercising the restraint is acting in his or her official capacity while on duty at a residential child care facility or the residential child

care facility is exempt from licensure under the Child Welfare Agency Licensing Act;

- (C) The agency has policy and procedures regarding restraints;
 - (i) no other alternative exists to control the child except for a restraint;
 - (ii) the child is in danger of hurting himself or herself or others;
 - (iii) the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;
 - (iv) the restraint is for a reasonable period of time; and
 - (v) the restraint is in conformity with the training and agency policy and procedures. Ark. Code Ann. § 9-27-303(3)(C).
- (10) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. Ark. Code Ann. § 9-27-303(3)(C)(iii).
- (11) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate. Ark. Code Ann. § 9-27-303(3)(C)(iv).

Neglect means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, that constitute:

- (1) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;
- (2) Failure or refusal to provide the necessary food, clothing, shelter, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;
- (3) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of such condition was known or should have been known;

- (4) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide shelter that does not pose a risk of health or safety to the juvenile;
- (5) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
- (6) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility; or
- (7) Failure to appropriately supervise the juvenile that results in a juvenile being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm.
- (8) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally homeschooled; or as a result of the acts or omissions by the juvenile's parent or guardian, the juvenile is habitually and without justification absent from school. Ark. Code Ann. § 9-27-303(36)(A).
- (9) Neglect shall also include causing a newborn to be born with:
 - (A) an illegal substance (a drug prohibited to be used or possessed without a prescription under the Arkansas Code Annotated section 5-1-101 et seq.) present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child; or
 - (B) an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.
 - (C) A test of the child's or mother's bodily fluids or bodily substances may be used as evidence to establish neglect pursuant to this subsection. Ark. Code Ann. § 9-27-303(36)(B).

Sexual abuse means:

- (1) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion (including attempted), indecent exposure, or forcing the watching of pornography or live human sexual activity by a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age. Ark. Code Ann. § 9-27-303(52)(A).
- (2) Sexual intercourse, deviant sexual activity or sexual contact (including attempted and solicitation) by a person eighteen (18) years or older to a person

not his or her spouse who is younger than fifteen (15) years of age. Ark. Code Ann. § 9-27-303(52)(B).

- (3) Sexual intercourse, deviant sexual activity, or sexual contact (including attempted and solicitation) by a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse. Ark. Code Ann. § 9-27-303(52)(C).
- (4) Sexual intercourse, deviant sexual activity, or sexual contact (including attempted), forcing or encouraging the watching of pornography, forcing permitting or encouraging the watching of live sexual activity, forcing listening to phone sex line, or an act of voyeurism by a caretaker to a person younger than eighteen (18). Ark. Code Ann. § 9-27-303(52)(D).
- (5) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion (including attempted) by a person younger than fourteen (14) to a person younger than eighteen (18). Ark. Code Ann. § 9-27-303(52)(E).
 - (A) **Caretaker** means a parent, guardian, custodian, foster parent, significant other of the child's parent, or any person fourteen (14) years or older entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare. Ark. Code Ann. § 9-27-303(8).
 - (B) **Forcible compulsion** means physical force, intimidation, or threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person. If the act was committed against the will of the juvenile, then forcible compulsion has been used. Ark. Code Ann. § 9-27-303(27)(A)-(B).
 - (C) The age, developmental stage, and stature of the victim and the relationship between the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove compulsion. Ark. Code Ann. § 9-27-303(27)(C).
 - (D) **Sexual contact** means any act of sexual gratification involving touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile, or the breast of a female, encouraging the juvenile to touch the offender in a sexual manner, or the requesting the offender to touch the juvenile in a sexual manner. Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment. Nothing in this section

shall permit normal affectionate hugging to be construed as sexual contact. Ark. Code Ann. § 9-27-303(53).

- (E) **Deviant sexual activity** means any act of sexual gratification involving:
- (i) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (ii) Penetration, however slight, of the labia majora or anus of one person by a body member or foreign instrument manipulated by another person. Ark. Code Ann. § 9-27-303(21).
- (F) **Sexual exploitation** includes allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting, obscenely posing or obscenely posturing a juvenile for any use or purpose. Ark. Code Ann. § 9-27-303(54).
- (G) **Voyeurism** means looking for the purpose of sexual arousal or gratification into a private location or place in which a juvenile is expected to be nude or partially nude. This definition does not apply to delinquency actions. Ark. Code Ann. § 9-27-303(62).

Dependent Juveniles

Dependent juvenile means:

- a child of a parent in DHS custody;
- a child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child; however if the reason for incarceration is related to the health and safety of the child, the child is not dependent;
- a child whose parent or guardian is incapacitated so they cannot care for the juvenile, and they have no appropriate relative or friend to care for the child;
- a child whose custodial parent dies and no appropriate relative or friend is able to care for the child;
- a child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- a safe-haven baby; or
- a child who has disrupted his or her adoption and the adoptive parents have exhausted resources available to them; or

- a child who has been a victim of human trafficking as a result of threats, coercion, or fraud. Ark. Code Ann. § 9-27-303(17).

Emergency Custody/72-Hour Hold

The circuit court shall have jurisdiction in proceedings in which emergency custody or a 72-hour hold has been placed on a juvenile, pursuant to Arkansas Code Annotated section 9-27-313 or the Child Maltreatment Act, pursuant to Arkansas Code Annotated section 12-18-101(a) et seq. Ark. Code Ann. § 9-27-306(a)(1)(C).

Termination of Parental Rights

A circuit court shall have jurisdiction for proceedings for termination of parental rights for a juvenile under this subchapter. Ark. Code Ann. § 9-27-306(a)(1)(E); Ark. Code Ann. § 9-27-341(a)(1)(A).

The Arkansas Supreme Court found that the juvenile court had jurisdiction over the father in termination case filed subsequent to dependency-neglect case. Ark. Dep't of Human Servs. v. Farris, 309 Ark. 575 (1992).

DHS Custody

Proceedings where custody of a juvenile is transferred to DHS or proceedings for which custodial placement proceedings are filed by DHS. Ark. Code Ann. § 9-27-306(a)(1)(F), (I).

When DHS exercises custody of a juvenile, pursuant to Arkansas Code Annotated section 12-18-101 (72-hour hold), and files an ex parte emergency order, or files a dependency-neglect petition concerning that juvenile, before or subsequent to the other legal proceeding, any party to that proceeding may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition. Upon such motion being filed, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case. Ark. Code Ann. § 9-27-306(a)(3).

Adoption

The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside of the state of Arkansas. Ark. Code Ann. § 9-27-306(a)(4).

Adoptions may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile. Ark. Code Ann. § 9-27-307(a)(4).

Guardianship

If a juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code, the guardianship petition shall be filed in that case if the juvenile resides in Arkansas. Ark. Code Ann. § 28-65-107(c)(1).

Guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile. Ark. Code Ann. § 9-27-307(a)(4).

Permanent Custody

Proceedings in dependency-neglect or family in need of services to set aside an order of permanent custody upon the disruption of the placement. Ark. Code Ann. § 9-27-306(a)(1)(J).

Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

The circuit court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state that are transferred, pursuant to the UCCJEA found at Arkansas Code Annotated section 9-19-101 et seq. Ark. Code Ann. § 9-27-306(d).

Appellant did not argue with the trial court's initial jurisdiction with the emergency order, but argued that the trial court lacked jurisdiction because it failed to contact the Louisiana court. However, there was no evidence in the record of a custody order or proceeding in Louisiana identified by appellant pursuant to Arkansas Code Annotated section 9-19-209. There was no certified copy of a Louisiana custody order ever registered in accord with Arkansas Code Annotated section 9-19-305. The only evidence was a statement by appellant about a case involving the physical abuse of her daughter five years ago and that the case had been closed.

UCCJEA does not require a trial court who has assumed temporary jurisdiction to return custody to a parent where there is no competing custody order and, in such absence, Arkansas Code Annotated section 9-19-204(b) applied, and Arkansas became the home state of the children. [Davis v. v. Ark. Dep't of Human Servs., 98 Ark. App. 275 \(2007\)](#).

The trial court was affirmed for dismissing a paternity and child support petition finding that it did not have jurisdiction because Arkansas was not the home state under the UCCJEA. The appellant argued that the paternity statutes, not the UCCJEA, should govern. The UCCJEA is the exclusive method for determining the proper forum in child custody proceedings, including paternity, involving other jurisdictions. The trial court was correct in finding that Arkansas was not the home state. There was evidence that the child lived in South Carolina. There was no evidence that the child had ever lived in Arkansas; no court declined to exercise jurisdiction on the grounds that Arkansas was a more appropriate forum; and no other American court had exercised jurisdiction. [Greenhough v. Goforth, 354 Ark. 502 \(2003\)](#).

The supreme court held that the probate court had jurisdiction to consider the guardianship petition. It further held that the Florida ex parte order at issue was

void ab initio and invalid on its face; that even had the Florida order been valid, it was not entitled to full faith and credit because it was never registered in Arkansas as required under the UCCJEA. DHS was without authority to seize the child and relinquish the child to Florida in direct violation of an order of a probate court in Arkansas. [Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205 \(2002\).](#)

Arkansas Supreme Court Administrative Order No. 14

The assignment of cases to the juvenile division of circuit courts shall be described by [Supreme Court Order No. 14.](#)

The definitions of probate and domestic relations are not intended to restrict the juvenile division of circuit court from hearing adoption, guardianship, support, custody, paternity or commitment issues which may arise in juvenile proceedings. [Supreme Court Administrative Order 14 \(1\)\(b\)](#) (Adopted April 6, 2001; amended November 1, 2001).

It was clearly erroneous for the trial court to grant an adoption finding that the appellant failed to have substantial contact or to contribute support. There was no evidence that appellant failed to significantly communicate or provide for her child for a one-year period. The trial court did not specify the time period for which the contact or contribution failed to occur. Further, the appellate court could not determine from review of the record if it lasted for the statutorily mandated period of one year. [Ray v. Sellers, 82 Ark App. 530 \(2003\).](#)

The trial court did not have jurisdiction to terminate appellant's parental rights. Arkansas Code Annotated section 9-9-220 sets out grounds for termination but only in connection with an adoption proceeding. [Hudson v. Kyle, 352 Ark. 346 \(2003\).](#)

The court of appeals reversed the trial court's order granting appellee putative father's motion to vacate an adoption based upon the trial court's finding that his consent was required. The court remanded for the trial court to consider Arkansas Code Annotated section 9-9-206 in conjunction with provision Arkansas Code Annotated section 9-9-207, upon which the trial court relied in finding that the appellee's consent was required. The court of appeals noted that the two provisions must be read together, and that the trial court should have the first opportunity to analyze the evidence under the appropriate statutory framework. [Britton v. Gault, 80 Ark. App. 311 \(2003\).](#)

Adoption case was certified to the supreme court by the court of appeals as presenting an issue of significant public interest. Court affirmed the probate court's reversal of an adoption and held that, before actual notice to a father of the adoption of his biological child may be deemed an adequate substitute for the

notice required by Arkansas Code Annotated section 9-9-212 and Rule 4 of the Rules of Civil Procedure, that notice must be gained before the entry of the adoption decree. Here, the natural father did not have knowledge of the adoption until after a final decree had been entered that forever terminated his rights as the child's father. Knowledge that an adoption has already occurred is not the same as notice and an opportunity to be heard before parental rights are terminated. Because the father had not been provided the kind of notice contemplated by Arkansas Code Annotated section 9-9-212 and the due process provisions of the US and Arkansas constitutions, the one-year limitations provision of section 9-9-216(b) did not bar his petition to set aside the adoption. [Mayberry v. Flowers, 347 Ark. 476 \(2002\).](#)

The court of appeals affirmed a trial court's overturning an adoption outside the one-year period of time set out in Ark. Code Ann. 9-9-216(b). The trial court had found, and the court of appeals affirmed, the factual finding that the adoptive parent(s) had never taken custody of the adoptive child. The court also affirmed the trial court's finding that a fraud was practiced upon the court in procuring the decree of adoption. [Wunderlich v. Alexander, 80 Ark. App. 167 \(2002\).](#)

Minor mother challenged an adoption of her child that was granted without the knowledge of her parents in this appeal of the trial court's denial of a petition to set aside the interlocutory order of adoption. The court of Appeals found that the trial court's finding that the teenager was not under duress when she executed a consent to adopt was not clearly erroneous. Social workers visited her only after she requested help with her baby's adoption, and she testified that neither of them attempted to force her to place her child for adoption, but that she made the decision herself. She was provided a guardian ad litem who explained the process of consenting and of revoking her consent. The court pointed out that consent can be withdrawn after an interlocutory order only upon a showing of fraud, duress, or intimidation and that, given the showing that she was under no duress at the time she executed the consent, her argument must fail. [Gray v. The Gladney Center, 79 Ark. App. 165 \(2002\).](#)

No Jurisdiction

In no event shall a juvenile remain under the court's jurisdiction past twenty-one (21) years of age. [Ark. Code Ann. § 9-27-306\(a\)\(2\).](#)

III. DISTRICT COURT JURISDICTION OF JUVENILES

Curfew Violations

The juvenile division of circuit court shall have concurrent jurisdiction with district court over juvenile curfew violations. Ark. Code Ann. ' 9-27-306(c)(1).

The prosecuting authority may file a curfew-violation FINS petition in juvenile division of circuit court or a citation in district court. Ark. Code Ann. ' 9-27-306(c)(2).

Traffic Offenses

See Ark. Code Ann. ' 9-27-303(15).

The Arkansas Supreme Court held that DWI is a traffic offense. Therefore, the juvenile division of chancery court does not have jurisdiction of DWI offenses. [Robinson v. Sutterfield, 302 Ark. 7 \(1990\).](#)

Because the juvenile court has no subject matter jurisdiction of DWI cases, the juvenile division court was without jurisdiction to dismiss the case on speedy trial grounds. Further, the court had no statutory authority to transfer the case to municipal court. Juvenile court was without authority to take any action in the case. [State v. J.B., 309 Ark. 70 \(1992\).](#)

Game & Fish Violations

See Ark. Code Ann. ' 9-27-303(15).

IV. PETITIONERS, PETITIONS, VENUE & TRANSFERS

Petitioners

Delinquency

Any person can submit a complaint to an intake officer for investigation, and upon substantiation, the officer may refer the matter to the prosecuting attorney or any appropriate agency. Ark. Code Ann. § 9-27-310(d).

Only the prosecutor can file a delinquency petition. Ark. Code Ann. § 9-27-310(b)(1).

Only the prosecutor can file a petition for revocation of probation. Ark. Code Ann. § 9-27-310(b)(1).

Only a law enforcement officer, prosecuting attorney, or DHS or its designee may file a dependency-neglect petition seeking ex parte emergency relief. Ark. Code Ann. § 9-27-310(b)(2).

Any adult or any member ten (10) years or older of the immediate family alleged in need of services can file a dependency-neglect or FINS petition. Ark. Code Ann. § 9-27-310(b)(3).

A paternity petition can be filed by the:

- (1) Biological mother,
- (2) Putative father,
- (3) Juvenile, or
- (4) Office of Child Support Enforcement (OCSE). Ark. Code Ann. § 9-27-310(b)(4).

Only DHS and the attorney ad litem can file petition to terminate parental rights, pursuant to the juvenile code. Ark. Code Ann. § 9-27-341(a)(1)(A).

Defendants

All of the following parties named in petition are defendants:

- (1) Juvenile; except in dependency-neglect petition, the juvenile shall not be named as a defendant but shall be named in the petition as a respondent and shall be served as a party defendant under section 9-27-312.
- (2) Each of the parents or the surviving parent;

- (3) The person, agency or institution having custody of juvenile;
- (4) Putative and presumed legal father in paternity petition; and
- (5) Putative parent in dependency-neglect petition. Ark. Code Ann. § 9-27-311(c)(1)-(2).

The trial court erred in denying standing to a putative father where he claimed to be the father and the mother claimed that he was the biological father. [Jorden v. Ark. Dep't of Human Servs., 73 Ark. App. 1, 38 S.W.3d 914 \(2001\).](#)

In all paternity actions, the petitioner shall be required to name as defendants only:

- (1) Mother
- (2) Putative father
- (3) Presumed legal father, if any. Ark. Code Ann. § 9-27-311(c)(2)(A).

Intervention

Where appellees moved to intervene on the day a temporary order finding probable cause for dependency-neglect was entered, which was just over a month after the original petition had been filed, and where appellant did not show that there was any prejudice as a result of the intervention, the juvenile court did not abuse its discretion in finding that the motion was timely.

The timeliness of a motion to intervene is a matter clearly within the trial court's discretion, and it will be reversed only where that discretion has been abused; the factors considered by the appellate court regarding the timeliness of a motion to intervene are: (1) how far the proceedings have progressed; (2) any prejudice to other parties caused by the delay; and (3) the reason for the delay. Under Rule 24(b) of the Arkansas Rules of Civil Procedure, intervention may be permitted when the main action and an applicant's claim or defense have a question of law or fact in common; here, the common facts and questions of law involved the proper care and custody of appellant's three sons; as with timeliness, permissive intervention is also a matter within the trial court's discretion, and the appellate court will reverse only for abuse of that discretion. [Lowell v. Lowell, 55 Ark. App. 211, 934 S.W.2d 540 \(1996\).](#)

The Arkansas Supreme Court found that a stepparent had no legal rights to the children; therefore, he could not intervene in proceedings initiated by DHS. The chancellor correctly found that the appellant's divorce from the children's mother

rendered moot any interest he might have. [Stair v. Phillips, 315 Ark. 429, 867 S.W.2d 453 \(1993\).](#)

Contents of Petition

Petition shall include:

- (1) Name, address, gender, date of birth, and social security number of each juvenile subject to the petition. [Ark. Code Ann. § 9-27-311\(a\)\(1\)\(A\).](#)

A single petition for dependency-neglect or FINS shall be filed which includes all siblings who are subjects of the petition. [Ark. Code Ann. § 9-27-311\(a\)\(1\)\(B\).](#)

- (2) Name and address of each of the juvenile's parents or surviving parent. [Ark. Code Ann. § 9-27-311\(a\)\(2\).](#)
- (3) Name and address of the person, agency, or institution having custody of juvenile or having a claim of custody or guardianship of the juvenile(s). [Ark. Code Ann. § 9-27-311\(a\)\(3\)-\(4\).](#)
- (4) Name and address of putative and presumed legal father in petition to establish paternity. [Ark. Code Ann. § 9-27-311\(a\)\(5\).](#)
- (5) The name and address of a putative parent in a dependency-neglect proceeding. [Ark. Code Ann. § 9-27-311\(a\)\(6\).](#)
- (6) Facts that, if proven, would bring juvenile and juvenile's family within court's jurisdiction. [Ark. Code Ann. § 9-27-311\(d\)\(1\)\(A\).](#)
- (7) Code section upon which jurisdiction is based. [Ark. Code Ann. § 9-27-311\(d\)\(1\)\(B\).](#)
- (8) Relief requested by petitioner. [Ark. Code Ann. § 9-27-311\(d\)\(1\)\(C\).](#)
- (9) Sections of criminal laws allegedly violated if delinquency petition has been filed. [Ark. Code Ann. § 9-27-311\(d\)\(1\)\(D\).](#)

Except in delinquency, paternity, or TPR petitions, a petition shall be supported by an affidavit of facts. [Ark. Code Ann. § 9-27-311\(d\)\(2\).](#)

If name or address of anyone listed above cannot be ascertained by petitioner with reasonable diligence, this shall be alleged and the petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to such persons [Ark. Code Ann. § 9-27-311\(b\).](#)

Filing Petition

With the circuit clerk of the circuit court, or

By transfer from another court. Ark. Code Ann. § 9-27-310(a).

No fees, including but not limited to fees for filing, copying, faxing, including petitions for adoptions and guardianships, summons or subpoenas shall be charged or collected by the clerk or sheriff's office for cases filed in the circuit court pursuant to this subchapter by a governmental entity or nonprofit, including but not limited to the PA, AAL in dependency-neglect cases or DHHS. Ark. Code Ann. § 9-27-310(e).

If the clerk's office has a fax machine, the clerk shall accept fax transmission of papers filed pursuant to this subchapter as described in Rule 5 of the Arkansas Rules of Civil Procedure in cases commenced by a governmental entity or nonprofit, including but not limited to the prosecuting attorney, attorney ad litem in dependency-neglect cases, or DHS. Ark. Code Ann. § 9-27-310(f).

Notification

Any juvenile defendant age ten (10) and above, any person having care and control of the juvenile, and any adult defendants shall be served with:

- (1) Copy of petition; and
- (2) Notice of hearing; or
- (3) Order to appear as provided by Arkansas Rules of Civil Procedure. Ark. Code Ann. § 9-27-312.

The U.S. Supreme Court held that juvenile and parents or guardian must be notified in writing of specific charges or factual allegations to be considered in hearing and that such notice be given at the earliest practicable time, sufficiently in advance of hearing to permit preparation. [In Re Gault, 387 U.S. 1 \(1967\)](#).

Concurrent with the filing, a copy of any petition requesting that DHS take custody or provide services shall be mailed to the DHS Director and local OCC attorney. Ark. Code Ann. § 9-27-310(c).

Venue

Juvenile shall be brought before the circuit court in county in which juvenile resides, except the following proceedings may be commenced in county where alleged act or omission occurred in:

- (1) Nonsupport proceedings after establishment of paternity; or
- (2) Delinquency proceedings; or
- (3) Dependency-neglect proceedings. Ark. Code Ann. § 9-27-307(a)(1)-(2).

No dependency-neglect proceeding shall be dismissed if filed in the incorrect county, but it shall be transferred to the proper county upon discovery of the juvenile's residence. Ark. Code Ann. § 9-27-307(a)(1)(B).

UCCJEA proceedings shall be commenced in court as provided by UCCJEA. Ark. Code Ann. § 9-27-307(a)(3).

Adoptions and guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile. Ark. Code Ann. § 9-27-307(a)(4).

Except for detention hearings, pursuant to Arkansas Code Annotated section 9-27-326 and probable cause hearings, pursuant to Arkansas Code Annotated section 9-27-315, juvenile proceedings shall comply with Arkansas Code Annotated section 16-13-210, which provides that that circuit judges shall have agreement of the parties to hear contested cases outside of the county of venue. Ark. Code Ann. § 9-27-307(a)(5).

Case Transfers

Following adjudication, the court may on its own motion or any party's motion transfer the case to the county of the juvenile's residence if the UCCJEA does not apply. Ark. Code Ann. § 9-27-307(b)(1).

The court shall not transfer any case prior to adjudication, except for improper venue transfers, or any case where a TPR petition has been filed unless the court has taken final action on the petition. Ark. Code Ann. § 9-27-307(b)(2).

Prior to transferring a case to another venue, the court shall contact the judge in the other venue to confirm that he or she will accept the case, and upon confirmation that the judge will accept the case, the transferring judge shall enter a transfer order that shall:

- (1) indicate that the judge has accepted the transfer;
- (2) state the location of the court in the new venue; and
- (3) set the date and time of the next hearing. Ark. Code Ann. § 9-27-307(c)(1)-(2).

The transfer order, along with copies of the court records, shall be provided to all parties in the case and shall be transmitted immediately to the judge accepting the transfer. Ark. Code Ann. § 9-27-307(c)(2)-(3).

V. TAKING INTO CUSTODY

Alleged Delinquent Juvenile

With Warrant

Officer shall immediately take the juvenile before the court issuing the warrant and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location. Ark. Code Ann. § 9-27-313(b)(1).

The judge shall decide whether the juvenile should be tried as a delinquent or a criminal defendant pursuant to Arkansas Code Annotated section 9-27-318. Ark. Code Ann. § 9-27-313(b)(2).

Without Warrant

By court order. Ark. Code Ann. § 9-27-313(a)(1)(A).

By law enforcement officer without a warrant under circumstances set forth in Rule 4.1 of the Arkansas Rules of Criminal Procedure. Ark. Code Ann. § 9-27-313(a)(1)(B).

By law enforcement officer or DHS representative if there is clear, reasonable grounds to conclude that:

- (1) Juvenile is in immediate danger; and
- (2) Removal is necessary to prevent serious harm, illness, or injury to juvenile; and
- (3) If parents, guardians, or others with authority to act are unavailable or have not taken appropriate action to protect juvenile; and
- (4) No time to petition for and to obtain an order before taking the juvenile into custody. Ark. Code Ann. § 9-27-313(a)(1)(C).

When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location. Ark. Code Ann. § 9-27-313(a)(2).

Mandatory Detention

Officer shall take a juvenile to detention and immediately make every effort to notify the custodial parent, guardian, or custodian of the juvenile's location when a juvenile is taken into custody for the following crimes:

- (1) Unlawful possession of a handgun;

- (2) Possession of a handgun on school property;
- (3) Unlawful discharge of a firearm from a vehicle;
- (4) Any felony committed while armed with a firearm; or
- (5) Criminal use of a prohibited weapon. Ark. Code Ann. § 9-27-313(d)(1)(A).

The law enforcement officer shall take juvenile to detention and notify the juvenile intake officer within twenty-four (24) hours so that a petition may be filed. Ark. Code Ann. § 9-27-313(d)(1)(A).

Under this subsection, a juvenile intake officer has no authority to release. Ark. Code Ann. § 9-27-313(d)(1)(B).

A detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile is taken into custody on an allegation of delinquency; however, if the seventy-two (72) hours ends on a holiday or weekend, then the next business day. Otherwise, the juvenile shall be released. Ark. Code Ann. § 9-27-326(a).

Alleged Felony

A law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location. Ark. Code Ann. § 9-27-313(b)(1).

A law enforcement officer may:

- (1) Take the juvenile to detention; or
 - (a) The intake officer shall be notified immediately to make a detention decision pursuant to Arkansas Code Annotated section 9-27-322 within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody.
 - (b) If a juvenile remains in detention, a detention hearing must be held within seventy-two (72) hours of the taking into custody; if the seventy-two (72) hours ends on a Saturday, Sunday or holiday, then the next business day. Ark. Code Ann. § 9-27-313(d)(1)(A).

Note: Arkansas Code Annotated section 9-27-326(a) provides that a detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile was taken into custody; however, if seventy-two (72) hours ends on a holiday or weekend then the next business day. Otherwise, the juvenile shall be released.

- (2) Issue a citation to the juvenile and his or her parents to appear before the juvenile court and release the juvenile; or
 - (A) The citation shall be issued pursuant to the Arkansas Rules of Criminal Procedure.
 - (B) The intake officer and the prosecuting attorney shall be notified within twenty-four (24) hours so that a petition may be filed. Ark. Code Ann. § 9-27-313(d)(2)(B).
- (3) Return the juvenile to his or her home. Ark. Code Ann. § 9-27-313(d)(2)(C).

Alleged Misdemeanor

If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location. Ark. Code Ann. § 9-27-313(d)(3).

Note: Arkansas Code Annotated section 9-27-322(a) provides that upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall immediately notify the juvenile's parent, guardian or custodian of the location at which the juvenile is being held and the reasons for the juvenile's detention if such notification has not previously taken place.

Notify the juvenile intake officer who shall make a detention decision pursuant to Arkansas Code Annotated section 9-27-322. Ark. Code Ann. § 9-27-313(d)(3)(A).

Law enforcement may issue a citation to the juvenile and his or her parents to appear before the juvenile court and release the juvenile.

The citation shall be issued pursuant to the Arkansas Rules of Criminal Procedure.

The intake officer and the prosecuting attorney shall be notified within twenty-four (24) hours so that a petition may be filed. Ark. Code Ann. § 9-27-313(d)(3)(B).

Law enforcement may return the juvenile to his or her home. Ark. Code Ann. § 9-27-313(d)(3)(C).

Custody Restrictions

Juvenile Statements

Statements made by juvenile to intake officer or probation officer during an intake process before a hearing on the merits of the petition shall not be used against juvenile at any stage of any proceedings. Ark. Code Ann. § 9-27-321.

Juvenile Release from Custody

If no delinquency petition to adjudicate the juvenile is filed within twenty-four (24) hours after the detention hearing or ninety-six (96) hours after the alleged delinquent is taken into custody, whichever is sooner, the alleged delinquent shall be discharged from custody, detention, or shelter care. Ark. Code Ann. § 9-27-313(f).

Juvenile Witness

When a law enforcement officer has reasonable cause to believe that any juvenile found at or near the scene of a felony is a witness to the offense, he or she may stop that juvenile.

After having identified himself, the officer must advise the juvenile of the purpose of the stop and may then demand his or her name, address, and any information he or she may have regarding the offense.

Such detention shall in all cases be reasonable and shall not exceed fifteen (15) minutes unless the juvenile shall refuse to give such information.

If detained further, the juvenile shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his or her name, address, or the information that the juvenile may have regarding the offense. Ark. Code Ann. § 9-27-317(i)(1)(C).

Questioning Juveniles

A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense until the law enforcement officer has advised the juvenile of his or her rights in the juvenile's own language. Those rights include as follows:

- (1) Miranda rights, and
- (2) Right to speak to his or her custodial parent, guardian or custodian or to have that person present. Ark. Code Ann. § 9-27-317(i)(2)(A)-(B).

No law enforcement officer shall question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile has indicated in any manner:

- (1) That he or she does not wish to be questioned; Ark. Code Ann. § 9-27-317(i)(2)(C)(i).

- (2) That he or she wishes to speak with his or her custodial parent, guardian or custodian or to have that person present; and Ark. Code Ann. § 9-27-317(i)(2)(C)(ii).

Circuit court affirmed in suppressing custodial statements of minor. Juvenile was taken into custody after an alleged terroristic threatening and criminal-mischief complaint at school. Juvenile had allegedly threatened to shoot another student. The officers questioned the juvenile and he was subsequently appointed counsel. Several days later, officers questioned him again about other criminal allegations.

When the State filed the delinquency petition, the juvenile filed a motion to suppress his statements, arguing that the police violated Arkansas Code Annotated section 9-27-317 by failing to notify his parents when he was taken into custody. The State argued that the trial court erred in suppressing the statement because there were no attempts to notify the parents. Under section 9-27-317(h)(2), authorities must notify a parent when a child is taken into custody. The parent is then present if the child invokes his or her right to speak to the parent. If the parent refuses to go, then counsel is appointed to represent the juvenile.

The Arkansas Supreme Court held that the parental notification operates as an invocation of the juvenile's right to counsel. Once invoked - questioning must stop!

The State's second argument that the trial court erred in ruling that the officers violated the juvenile's Sixth Amendment right to counsel once counsel was appointed and when officers questioned him outside the presence of counsel is not necessary to address because the trial court properly suppressed the statements on the basis that officers made no attempt to contact the juvenile's parents prior to questioning the juvenile. [State v. L.P., 369 Ark. 21 2007](#)).

Since the felony information charging appellant with capital murder was not filed in juvenile court, he had no right to assert that his mother should have been present during his questioning. [Jenkins v. State, 348 Ark. 686 \(2002\)](#).

A sixteen-year-old juvenile was charged as an adult with capital murder, burglary and theft of property. He argued that the trial court should have suppressed his statement because he asked to speak to a parent and questioning should have stopped pursuant to the juvenile code. However, the Arkansas Supreme Court, in a 4-3 decision, held that since the juvenile was to be charged as an adult, the protection in the juvenile code of having

a parent present during the interrogation did not apply. [Ray v. State, 344 Ark. 136 \(2001\).](#)

A juvenile's right to speak to a parent/guardian or to have one present at questioning is a statutory, not a constitutional right. Law enforcement does not have to inform a juvenile of this right. The juvenile must invoke this right. [Miller v. State, 338 Ark. 445 \(1999\); Matthews v. State, 67 Ark. App. 35 \(1999\).](#)

A juvenile has the right to speak to a parent or have a parent present during juvenile or criminal proceedings; however, the juvenile and not the parent or guardian must invoke this statutory right. [Conner v. State, 334 Ark. 457; Isbell v. State, 326 Ark. 17 \(1996\).](#)

- (3) that he or she wishes to consult counsel before submitting to any questioning. [Ark. Code Ann. § 9-27-317\(i\)\(2\)\(C\)\(iii\).](#)

No waiver of the right to counsel shall be accepted when a juvenile is in the custody of DHS, including the Division of Youth Services. [Ark. Code Ann. § 9-27-317\(g\).](#)

All waivers of the right to counsel, except those made in the presence of the court and accepted only upon a finding by the court of clear and convincing evidence, shall be in writing and signed by the juvenile. [Ark. Code Ann. § 9-27-317\(h\)\(1\).](#)

When a custodial parent, guardian, or custodian cannot be located or is located and refuses to go where the juvenile is held, counsel shall be appointed as if the juvenile invoked the right to counsel. [Ark. Code Ann. § 9-27-317\(h\)\(2\).](#)

A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall advise the juvenile of his or her Miranda rights in the juvenile's own language. [Ark. Code Ann. § 9-27-317\(i\)\(2\)\(A\).](#)

Fingerprinting & Photographing

A juvenile shall be photographed and fingerprinted by the law enforcement agency when he or she is arrested for an offense that, if committed by an adult, would constitute a felony or a Class A misdemeanor wherein violence or the use of a weapon was involved. [Ark. Code Ann. § 9-27-320\(a\)\(1\).](#)

In an allegation of delinquency, a juvenile shall not be photographed or fingerprinted by any law enforcement agency unless he or she has been taken into custody for the commission of an offense that, if committed by an adult, would be a felony or a Class A misdemeanor wherein violence or the use of a weapon was involved. [Ark. Code Ann. § 9-27-320\(a\)\(2\).](#)

Copies of a juvenile's fingerprints and photograph shall be made available only to:

- (1) Law enforcement agencies;
- (2) Arkansas Crime Information Center (ACIC);
- (3) Prosecuting attorneys; and
- (4) Juvenile division of circuit court. Ark. Code Ann. § 9-27-320(b)(1).

Photographs and fingerprints of juveniles adjudicated delinquent for offenses for which they could have been tried as adults shall be made available to prosecuting attorneys and circuit courts for use at sentencing in subsequent adult criminal proceedings against those same individuals. Ark. Code Ann. § 9-27-320(b)(2).

Each law enforcement agency in the state shall keep a separate file of photographs and fingerprints with the intention that such photographs and fingerprints of juveniles not be kept in the same file with those of adults. Ark. Code Ann. § 9-27-320(c).

When the juvenile is found not to have committed the alleged delinquent act, the juvenile court:

- (1) may order any law enforcement agency to return all pictures and fingerprints to the juvenile court; and
- (2) shall order the law enforcement agency that took the juvenile into custody to mark the arrest record with the notation "found not to have committed the alleged offense." Ark. Code Ann. § 9-27-320(d).

Custody of Alleged Dependent-Neglected Juvenile

By court order. Ark. Code Ann. § 9-27-313(a)(1).

By law enforcement officer or DHS representative if there are clear reasonable grounds to conclude that the:

- (1) Juvenile is in immediate danger;
- (2) Removal is necessary to prevent serious harm from his or her surroundings and to prevent illness or injury to juvenile;
- (3) Parents or others with authority to act are unavailable or have not taken appropriate action to protect juvenile from danger; and
- (4) There is not time to petition for and obtain a court order. Ark. Code Ann. § 9-27-313(a)(1)(C).

By law enforcement officer, DHS representative, or other authorized person when juvenile is alleged to be dependent-neglected or pursuant to Child Maltreatment Reporting Act. Ark. Code Ann. § 9-27-313(c); Ark. Code Ann. § 12-18-1001(a).

When taken into custody, the official shall notify DHS and make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location, and written notification to the parents shall provide:

- (1) That the juvenile has been taken into foster care;
- (2) The name, location, and number of a DHS representative whom they can contact about the juvenile;
- (3) The juvenile's and parents' rights to receive a copy of the petition;
- (4) The location and telephone number of court; and
- (5) The procedure for obtaining a hearing; or Ark. Code Ann. § 9-27-313(c)(1)(B).
- (6) Return the juvenile home. Ark. Code Ann. § 9-27-313(c)(2).

Custody of Alleged FINS

By court order; Ark. Code Ann. § 9-27-313(a)(1).

By law enforcement officer or DHS representative if there are clear reasonable grounds to conclude that the:

- (1) Juvenile is in immediate danger; and
- (2) Removal is necessary to prevent serious harm from his or her surroundings or from illness or injury to juvenile; and
- (3) Parents, guardians, or others with authority to act are unavailable or have not taken appropriate action to protect juvenile from danger; and
- (4) There is not time to petition for and obtain a court order. Ark. Code Ann. § 9-27-313(a)(1)(C).

FINS Custody Options

- (1) Take juvenile to shelter care.
 - (A) Law enforcement shall notify DHS, parents, guardian, other person having care of the juvenile, and the intake officer.
 - (B) Written notification to parents shall provide:

- (i) the juvenile's location;
 - (ii) juvenile's and parents' right to receive copy of petition;
 - (iii) location and telephone number of court; and
 - (iv) procedure for obtaining a hearing. Ark. Code Ann. § 9-27-313(e)(1).
- (2) Return the juvenile home. Ark. Code Ann. § 9-27-313(e)(2).
- (3) Hold in juvenile detention facility for identification, processing, or arranging for release or transfer to an alternative facility, only if:
 - (A) the parent, guardian, or other person lives beyond a 50-mile radius or out of state and the juvenile has been away from home for more than twenty-four (24) hours, and the juvenile may be held in a juvenile detention facility for up to six (6) hours (if parent lives in state) or twenty-four (24) hours excluding weekends and holidays (if parent lives out of state). Ark. Code Ann. § 9-27-313(e)(1)(B)(i).

Limitation on the Detention of FINS

Such holding shall be limited to the minimum time necessary for purposes of identification, processing, or arranging for release or transfer to another facility.

Holding shall not occur in any facility utilized for the incarceration of adults and must also be separated from detained juveniles charged or held for delinquency. Ark. Code Ann. § 9-27-313(e)(1)(B)(ii).

DHS Custody Solely Because of Actions of Someone Other than Custodial Parent

DHS shall immediately exercise all efforts to identify and locate the custodial parent or custodial parents of the minor. Ark. Code Ann. § 9-25-104(a).

When the custodial parent is identified and located, and if that parent is a custodial parent, DHS shall immediately notify the parent as to the location of the minor and of the parent's right to obtain possession of the minor at that location. Ark. Code Ann. § 9-25-104(b).

DHS shall not withhold custody or possession of any child from the child's custodial parent or parents unless a petition for dependency-neglect is filed naming the custodial parent or parents as a party. Ark. Code Ann. § 9-25-104(c).

VI. EMERGENCY EX PARTE ORDERS

Ex Parte Order

Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists that immediate emergency custody is necessary to:

- (1) Protect the juvenile's health or physical well-being from immediate danger; or
- (2) Prevent juvenile's removal from state. Ark. Code Ann. § 9-27-314(a)(1).

Court shall issue an ex parte order to provide specific appropriate safeguards to protect the juvenile when there is probable cause to believe an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger. Ark. Code Ann. § 9-27-314(a)(2)(A).

Specific safeguards shall include the court's ability to restrict a legal custodian's right to:

- (1) Having contact with the juvenile;
- (2) Removing the juvenile from a placement if the legal custodian placed or allowed the child to remain in that home for more than six (6) months and DHS has no immediate health, physical or well-being concerns. Ark. Code Ann. § 9-27-314(a)(2)(B).

The court shall issue an emergency ex parte order for emergency custody placing custody of the juvenile with DHS when there is probable cause to believe that he or she is a dependent juvenile. Ark. Code Ann. § 9-27-314(a)(3).

Dependent juvenile means:

- (1) A child of a parent who is in DHS custody;
- (2) A child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
- (3) A child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;
- (4) A child whose custodial parent dies and no appropriate relative or friend is willing or able to care for the child;
- (5) A child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;

- (6) A safe-haven baby;
- (7) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them;
- (8) A child who has been a victim of human trafficking as a result of threats, coercion, or fraud. Ark. Code Ann. § 9-27-303(17).

Purpose of ex parte order for emergency custody is to:

Remove the juvenile from custody of parent, guardian, or custodian as necessary to protect the health and well-being of the juvenile from danger or to prevent the juvenile's removal from the state; and

To determine an appropriate plan for the juvenile's placement. Ark. Code Ann. § 9-27-314(a).

Ex Parte Order Notice

The order shall include notice to all defendants and respondents named in the petition of the:

- (1) Right to hearing and procedure for obtaining hearing within five (5) business days of issuance of ex parte order;
- (2) Right to representation by counsel;
- (3) Right to appointed counsel if indigent and the procedure for obtaining appointed counsel; and

The court may appoint counsel for the parent or guardian from whom legal custody was removed in the emergency ex parte order and determine eligibility at the probable cause hearing.

Location and telephone number of the court and the date and time of the probable cause hearing, if known. Ark. Code Ann. § 9-27-314(b).

Immediate notice of order shall be given by the petitioner or by the court to the juvenile's parents, guardians, or custodian and the juvenile. Ark. Code Ann. § 9-27-314(c)(1).

All defendants shall be served according to Arkansas Rules of Civil Procedure or as otherwise provided by court. Ark. Code Ann. § 9-27-314(c)(2).

Appointment of Parent Counsel

The court may appoint counsel for the parent or guardian from whom legal custody was removed in the emergency ex parte order and determine eligibility at the probable cause hearing. Ark. Code Ann. § 9-27-314(b)(3)(A).

Appointment of Attorney Ad Litem

The court shall appoint an attorney ad litem to represent the best interest of the juvenile when an emergency ex parte order is entered in a dependency-neglect case. Ark. Code Ann. § 9-27-316(f)(1).

Federal IV-E Findings Required

In the initial order of removal, the court shall make specific findings:

- (1) Whether it is contrary to the welfare of the juvenile to remain at home;
- (2) Whether removal and the reasons for removal is necessary to protect the health and safety of the juvenile; and
- (3) Whether removal is in the best interest of the juvenile. Ark. Code Ann. § 9-27-328(b)(1).

VII. RIGHT TO COUNSEL

Alleged Juvenile Delinquents' and FINS' Right to Counsel

A juvenile and his or her parent, guardian or custodian shall be advised of the juvenile's right to counsel at all stages of the proceedings. Juvenile shall be advised of right by:

- (1) Law enforcement officer taking a juvenile into custody;
- (2) Intake officer at the initial intake interview;
- (3) Court at the juvenile's first appearance. Ark. Code Ann. § 9-27-316(a); Rhoades v. State, 315 Ark. 658 (1994).

Arkansas Code Annotated section 9-27-316 makes it clear that in both delinquency and FINS cases a juvenile has a right to counsel and to an attorney ad litem who represents the best interest of the juvenile, but that this is not intended to be the same person. Because the juvenile was denied counsel, the trial court exceeded its authority, and the order was thus invalid. The petitioner's writ of habeas corpus was granted. Since the writ of habeas is granted the writ of certiorari is moot. Ark. Dep't of Human Servs. v. Mainard, 358 Ark. 204 (2004).

The provisions of Anders v. California, 386 U.S. 738 (1967), which protect an adult appellant's right to counsel on appeal, apply equally to a juvenile's appeal of an adjudication of delinquency. Gilliam v. State, 305 Ark. 438 (1991).

The U.S. Supreme Court held that the child and his parent must be notified of the child's right to be represented by counsel and to have counsel appointed if they cannot afford it. In Re Gault, 387 U.S. 1 (1967).

EJJ Offenders' Right to Counsel

A right to counsel for an EJJ offender exists at every stage of the proceeding, including all reviews. Ark. Code Ann. § 9-27-316(a)(2).

Note: Arkansas Code Annotated section 9-27-317(f) provides that no waiver of counsel shall be accepted in any case when a juvenile has been designated as an EJJ offender.

Appointed Counsel

Court shall appoint counsel to represent juvenile at all appearances before the court if counsel is not retained or it does not appear that counsel will be retained, unless counsel is waived in writing. Ark. Code Ann. § 9-27-316(c).

Court shall appoint counsel for the juvenile when judge determines that there is a reasonable likelihood that the juvenile proceeding will result in commitment to an

institution in which the juvenile's freedom would be curtailed and counsel has not been retained. Ark. Code Ann. § 9-27-316(d).

Note: Arkansas Code Annotated section 9-27-317(e) provides that no waiver of counsel shall be accepted in any case where counsel was appointed due to likelihood of juvenile's commitment to an institution.

Court shall consider juvenile's and family's financial resources. Ark. Code Ann. § 9-27-316(b)(1).

The court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorneys' fees and expenses for representation of a juvenile:

- (1) Following a review by the court of an affidavit of financial means completed and verified by the parent, and
- (2) Determination by the court that the parent or juvenile has the ability to pay. Ark. Code Ann. § 9-27-316(b)(2).

Failure of juvenile's family to retain counsel for juvenile shall not deprive juvenile of the right to appointed counsel. Ark. Code Ann. § 9-27-316(b)(1)(B).

Appointment of counsel shall be made sufficiently in advance of court appearance to allow adequate preparation and consultation with client. Ark. Code Ann. § 9-27-316(e).

Alleged Dependent-Neglected Juveniles' Right to Counsel

The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Arkansas Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier. Ark. Code Ann. § 9-27-316(f)(1); [Supreme Court Administrative Order Number 15](#).

The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem. Ark. Code Ann. § 9-27-316(f)(2).

Each attorney ad litem shall:

- (1) File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;
- (2) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and
- (3) Present witnesses and exhibits when necessary to protect the juvenile's best interest. Ark. Code Ann. § 9-27-316(f)(3).

An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including but not limited to:

- (1) school records,
- (2) medical records,
- (3) juvenile court records, and
- (4) DHS records to the extent permitted by federal law. Ark. Code Ann. § 9-27-316(f)(4).

If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest. Ark. Code Ann. § 9-27-316(f)(5)(B).

Court Appointed Special Advocate (CASA)

The court may appoint a volunteer CASA from a program that shall meet all state and national CASA standards to advocate for juveniles in dependency-neglect proceedings. Ark. Code Ann. § 9-27-316(g)(1).

No CASA shall be assigned a case before:

- (1) Completing a training program in compliance with national and state standards; and
- (2) Being approved by the local CASA program which will include appropriate criminal background and child abuse registry checks. Ark. Code Ann. § 9-27-316(g)(2).

Each CASA shall investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports.

The CASA may testify if called as a witness.

When the CASA prepares a written report for the court, the advocate shall provide all parties with a copy of the written report seven business days before the relevant hearing.

Each CASA shall monitor the case to which he or she is assigned to ensure compliance with the court's orders. Ark. Code Ann. § 9-27-316(g)(3).

Upon presentation of an order of appointment, a CASA shall be provided access to all records relevant to the juvenile's case, including but not limited to:

- (1) school records,
- (2) medical records,
- (3) juvenile court records, and
- (4) DHS records to the extent permitted by federal law. Ark. Code Ann. § 9-27-316(g)(4).

A CASA is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses. Ark. Code Ann. § 9-27-316(g)(5).

A CASA shall not be liable for damages for personal injury or property damage, pursuant to Arkansas Code Annotated sections 16-6-101 through 105. Ark. Code Ann. § 9-27-316(g)(6).

Except as provided by this subsection, a CASA shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law. Ark. Code Ann. § 9-27-316(g)(7).

Parent's and Guardian's Right to Counsel

All parents and custodians have a right to counsel in all dependency-neglect proceedings. Ark. Code Ann. § 9-27-316(h)(1)(A).

Parents and custodians shall be advised in the dependency-neglect petition or the ex parte emergency order, whichever is sooner, and at the first appearance before the court, of the right to counsel and the right to appointed counsel, if eligible. Ark. Code Ann. § 9-27-316(h)(1)(C).

In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian, the parent or custodian from whom custody was removed shall have the right to be appointed counsel, and the court shall appoint counsel if the court makes a finding that the parent or custodian from whom custody was removed is indigent and counsel is requested by the parent or custodian. Ark. Code Ann. § 9-27-316(h)(1)(B).

The right to an attorney and the appointment upon a determination of indigency are mandatory. It was an error to proceed at a hearing where the appellant requested representation and to require her to testify without representation; however, it was harmless in the limited circumstance of this case. The error was cured at the termination hearing where appellant was represented by counsel and where all the evidence presented at earlier hearings was presented. [Briscoe v. State, 323 Ark. 4 \(1996\).](#)

Appellant's right to counsel was not violated where she was notified of her right to counsel and had obtained counsel to represent her; she did not object to the

hearing commencing, nor did the attorney representing her at the subsequent hearing. [Nance v. Ark. Dep't of Human Servs., 316 Ark. 43 \(1994\).](#)

All parents shall have the right to be appointed counsel in termination of parental rights hearings, and the court shall appoint counsel if the court makes a finding that the parent is indigent and counsel is requested by parent. [Ark. Code Ann. § 9-27-316\(h\)\(1\)\(D\).](#)

The circuit court's finding that appellant was not indigent for the purpose of his TPR appeal was affirmed. At a hearing on appellant's indigency motion, the circuit court noted that his affidavit was not sworn to, and, without objection, took judicial notice that appellant testified at the TPR hearing that he made \$2100 per month. The burden of establishing indigency is on the person claiming indigency status and is a question of law and fact. The circuit court is directed to use the federal poverty guidelines in determining indigency. [Cordero v. Ark. Dep't of Human Servs., 2014 Ark. 64.](#)

Appellant's claim that she was denied the right to effective assistance of counsel under the Sixth Amendment and that she was prejudiced by her first appointed counsel was not addressed in this case because appellant did not raise the issue with the trial court. However, the court recognized a parent's right to counsel for parents in termination proceedings includes the right to effective counsel and adopted the standard for ineffectiveness set out in Strickland v. Washington, 466 U.S. 668 (1984). Strickland requires the defendant to prove:

Counsel's performance was deficient, and

Counsel's deficient performance prejudiced the defendant to the extent of depriving him or her of a fair trial.

[Jones v. Ark. Dep't of Human Servs., 361 Ark. 164 \(2005\).](#)

TPR reversed because trial judge erred in finding that appellant had waived her right to counsel. In order to establish a voluntary and intelligent waiver, the judge must:

Explain the desirability of having the assistance of counsel; and,

Advise the parent of the drawbacks and disadvantages of self-representation so that the record will establish that he/she knows what he/she is doing and that he or she has made the choice with his or her eyes wide open.

[Battishill v. Ark. Dep't of Human Servs., 78 Ark. App. 68 \(2002\).](#)

The Arkansas Supreme Court vacated the Arkansas Court of Appeals and held that appellant's request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, because her request did not satisfy constitutional standards for the waiver of counsel. A waiver of counsel is valid only if:

Request is unequivocal and timely asserted;

There has been a knowing and intelligent waiver of the right to counsel; and,

The defendant has not engaged in conduct that would prevent the fair and orderly exposition of the issues.

[Bearden v. Ark. Dep't of Human Servs., 344 Ark. 317 \(2001\).](#)

If at the permanency planning hearing the court establishes the goal of adoption and counsel has not yet been appointed for a parent, the court shall appoint counsel in the permanency planning order to represent the parent as provided by subdivision (h)(1)(D) of this section. [Ark. Code Ann. § 9-27-316\(h\)\(2\).](#)

Putative parents do not have a right to appointed counsel in dependency-neglect proceedings, except for termination of parental rights proceedings, and only if:

- (1) The court makes a finding on the record that the putative parent is indigent;
- (2) The court finds that the putative parent has established significant contacts with the juvenile so that the putative rights attach;
- (3) Due process requires appointment of counsel for a full and fair hearing for the putative parent in the termination hearing; and
- (4) The putative parent requested counsel. [Ark. Code Ann. § 9-27-316\(h\)\(3\).](#)

If at the permanency planning hearing the court establishes the goal of adoption, the court shall determine if the putative parent has established significant contacts with the juvenile in order for the putative parent's rights to attach and shall appoint counsel if eligible as provided in subdivision (h)(3) of this section. [Ark. Code Ann. § 9-27-316\(h\)\(4\).](#)

The attorney shall be provided access to all relevant records, including but not limited to:

- (1) school records,
- (2) medical records,

- (3) juvenile court records, and
- (4) DHS records to which they are entitled under state and federal law. Ark. Code Ann. § 9-27-316(h)(5).

Appointment of counsel shall be made sufficiently in advance of court appearance to allow adequate preparation and consultation with client. Ark. Code Ann. § 9-27-316(h)(6)(A).

Attorney Fees and Payment

The court shall order financially able parents or custodians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation after review by the court of an affidavit of financial means completed and verified by the parent or custodian and a determination by the court of any ability to pay. Ark. Code Ann. § 9-27-316(h)(5)(A).

All moneys collected by the clerk shall be placed in the Juvenile Court Representation Fund this fund. Ark. Code Ann. § 9-27-316(b)(2); Ark. Code Ann. § 9-27-316(h)(5)(B)(i).

Court may direct that money from this fund be used to provide counsel for indigent parents or custodians in dependency-neglect cases at the trial level. Ark. Code Ann. § 9-27-316(h)(5)(b)(ii).

Upon a determination of indigency and a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and that state funds have been exhausted, the court may order the county to pay such reasonable fees and expenses, until the state provides funding for such counsel. Ark. Code Ann. § 9-27-316(h)(5)(iii).

The court held that requiring counsel to represent an indigent parent pro bono in a termination case amounts to an unconstitutional taking. Although termination cases are civil in nature, the same principles that require payment of attorney's fees for indigent criminal defense are applicable to termination cases. [Baker v. Ark. Dep't of Human Servs., 340 Ark. 42 \(2000\)](#).

This is a supplemental opinion granting petition for rehearing on the issue of indigent counsel fees in a termination of parental rights case. The parent's attorney argued that the Juvenile Court Representation fund is not the appropriate fund to be used for the payment of indigent parent's counsel in TPR cases. The court agreed and stated that the claim is against the state. Thus, the State is responsible for payment of her fees and expenses for services performed on behalf of the State. The court granted counsel fees and costs for work at the appellate level and remanded the matter to the trial court to be paid out of the Juvenile Court Representation Fund. In the event there are insufficient funds, the court directed the attorney to seek compensation from the Arkansas Claims

Commission. The court invited the General Assembly to consider an alternative source during the next legislative session. [Baker v. Ark. Dep't of Human Servs., 340 Ark. 408 \(2000\).](#)

VIII. WAIVER OF RIGHT TO COUNSEL

Miranda Rights

A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall not question the juvenile until the law enforcement officer has advised the juvenile of his or her Miranda rights in the juvenile's own language and the right to speak to his or her custodial parent, guardian or custodian or to have that person present. Ark. Code Ann. § 9-27-317(i)(2)(A)-(B).

"Miranda rights" means the requirement set out in *Miranda v. Arizona*, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, including that:

- (1) The juvenile has the right to remain silent;
- (2) Anything the juvenile says will be used against him or her in court;
- (3) The juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation; and
- (4) If the juvenile is indigent, a lawyer will be appointed to represent him or her. Ark. Code Ann. § 9-27-303(35).

Court Finding

After questioning, the court must find by clear and convincing evidence that the:

- 1) Juvenile understands the implications of the right to counsel; Ark. Code Ann. § 9-27-317(a)(1).
- (2) Juvenile freely, voluntarily, and intelligently waives right to counsel; and Ark. Code Ann. § 9-27-317(a)(2).
- (3) Parent, guardian, or custodian, or counsel agreed with the juvenile's decision to waive the right to counsel. Ark. Code Ann. § 9-27-317(a)(3).

Agreement accepted by the court only if the court finds that such person:

- (1) freely, voluntarily, and intelligently made the decision to agree to juvenile's waiver of counsel;
- (2) has no adverse interest to juvenile; and
- (3) consulted with juvenile about the juvenile's waiver of counsel. Ark Code Ann. § 9-27-317(b).

It was unnecessary for the parent or guardian to consent to the juvenile's waiver of the right to counsel in connection with her custodial statement. [Matthews v. State, 67 Ark. App. 35 \(1999\)](#).

A parent must consent to the juvenile's right to waive counsel pursuant to Arkansas Code Annotated section 9-27-317(a)(3). This provision only applies when the juvenile is charged in juvenile court, not when he or she is charged in circuit court. [Conner v. State, 334 Ark. 457\(1998\)](#); [Misskelly v. State, 323 Ark. 449 \(1996\)](#), cert. denied, 519 U.S. 898 (1996).

The court shall consider all circumstances of the waiver including:

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether juvenile understood the consequences of the waiver;
- (3) Whether the parent, guardian or custodian understood the consequences of the waiver in cases where the parent, guardian or custodian agreed with the juvenile's waiver of the right to counsel;
- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the waiver was a result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her custodial parent, guardian, or custodian were advised of juvenile's right to remain silent and to appointed counsel and had waived such rights; and
- (7) Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the record waiver. [Ark. Code Ann. § 9-27-317\(c\)\(1\)-\(7\)](#).

Based on the totality of the circumstances, the initial statements made to the police without Miranda warnings were not involuntary so as to render the second warned statements inadmissible. Although appellants were minors and they were interviewed at the police station, they were interviewed in the presence of their caretakers and there was no evidence of any improper tactics to compel them to speak. [Dye v. State, 69 Ark. App. 15 \(2000\)](#).

Based on the totality of the circumstances the juvenile's custodial statement was voluntary based on the following: the juvenile was four days from his fourteenth birthday when he was questioned; there was no evidence that he had below average I.Q.; he had completed the sixth grade and could read and write; the detention was not long; and there was no evidence of threats, violence, false statements, psychological tactics, promises or other devices to obtain his

confession. He made a knowing and intelligent waiver of his Miranda rights based on his age, experience, education, background and intelligence. In addition there was no evidence that he was under the influence of drugs or alcohol at the time he waived his rights. [Miller v. State, 338 Ark. 445 \(1999\).](#)

Appellant contended that her statement was not the product of a knowing and intelligent waiver due to her young age and due to it being made without a parent present. Appellant's age is a factor in determining the voluntariness of the waiver; however, based on the totality of the circumstances the trial court's decision was not clearly erroneous. [Matthews v. State, 67 Ark. App. 35 \(1999\).](#)

The court looks at the totality of the circumstances in determining whether a waiver of counsel was voluntarily, knowingly, and intelligently given. [Humphrey v. State, 327 Ark. 753 \(1997\).](#)

The court found that an inquiry as to the waiver of counsel includes: (1) whether the waiver was "voluntary" in the sense that it was the product of a free and deliberate choice rather than by intimidation, coercion, or deception, and (2) whether the waiver was made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. A custodial statement is presumptively involuntary and the state has the burden to prove by a preponderance of the evidence that a custodial statement was given voluntarily, and was knowingly and intelligently made. The court considers the following factors to determine if the confession was voluntary: age, education, intelligence of the accused, lack of advice of his constitutional rights, length of detention, repeated and prolonged nature of questioning, or use of physical punishment. [Humphrey v. State, 327 Ark. 753 \(1997\).](#)

The court considers whether the special rights accorded to a juvenile by statute were observed by authorities in deciding whether, according to the totality of the circumstances, a confession was freely and voluntarily given. [Isbell v. State, 326 Ark. 17 \(1996\).](#)

A defendant may waive his right to remain silent and his right to counsel only if the waiver is made voluntarily, knowingly, and intelligently. Custodial statements are presumed involuntary and the state has the burden of proving otherwise. Factors in determining the voluntariness of a custodial statement include: the age, education, and intelligence of the accused, the length of the detention during which the statement was given, the use of repeated or prolonged questioning, the use of mental punishment or coercion, and the advice or lack of advice of an accused's constitutional rights.

The court will make an independent determination based on the totality of the circumstances and will reverse only if the decision was clearly against the

preponderance of the evidence. The court enumerated the factors to be considered in a juvenile's waiver set forth at Arkansas Code Annotated section 9-27-317.

Despite the juvenile's alleged mental deficiencies, the Arkansas Supreme Court has upheld a suspect's Miranda waiver even when the suspect was determined to be intellectually impaired. Although age and mental capacity were factors to consider, the trial court did not err in concluding that these factors rendered appellant's confession inadmissible. [Ingram v. State, 53 Ark. App. 77 \(1996\).](#)

Juvenile Waiver of Counsel

All waivers shall be in writing and signed by juvenile, except when a waiver is given in the presence of the court. [Ark. Code Ann. § 9-27-317\(h\)\(1\).](#)

Appellant was convicted of capital felony murder and sentenced to life without parole. The court stated that when an appellant is ultimately charged in circuit court and is ultimately tried there, the failure of the law enforcement officers to obtain the consent of appellant's parents to his waiver of right to counsel does not bar admission of appellant's confession. [Sims v. State, 320 Ark. 528 \(1995\).](#)

Note: Although Act 68 of 1994 amended Arkansas Code Annotated section 9-27-317(f) to no longer require a parent to sign a juvenile's waiver of counsel, Arkansas Code Annotated section 9-27-317(a)(3) requires the court to find by clear and convincing evidence that the parent, guardian, custodian or counsel agreed with the decision to waive the juvenile's right to counsel.

The appellant argued that his confession was inadmissible at the transfer hearing because neither of his parents had signed a written waiver of his right to counsel as required by Arkansas Code Annotated section 9-27-317(f). The appellant relied on Rhoades v. State, 315 Ark. 658, 869 S.W.2d 698 (1994), where the juvenile was transferred to juvenile court and he was adjudicated a delinquent. The court held that the Arkansas Juvenile Code applied in the Rhoades case at the time the juvenile gave his confession and that the law enforcement officers' failure to comply with section 9-27-317 barred the juvenile's confession at the adjudicatory hearing.

Since the appellant was charged in circuit court and will ultimately be tried in circuit court, the failure to obtain the consent of the parents did not bar the juvenile's confession. Further, the court stated that even if there was an error in admitting the confession, the appellant could not demonstrate prejudice. [Ring v. State, 320 Ark. 128 \(1995\).](#)

Arkansas Code Annotated section 9-27-317 sets out the procedures required when obtaining a waiver, which includes a written and signed waiver of the right to counsel signed by the juvenile and his parent, guardian or custodian. Where

appellant had not been charged with a felony in circuit court as an adult when law officers interrogated him and obtained his confession, the Juvenile Code applied at the time he gave his statement. Therefore, appellant's statement was inadmissible at trial because the law enforcement officer's conduct failed to comply fully with the right-to-counsel and waiver provisions required by the Juvenile Code. [Rhoades v. State, 315 Ark. 658 \(1994\).](#)

No Waiver of Counsel

No waiver of counsel shall be accepted in any case:

- (1) When the parent, guardian, or custodian has:
 - (A) Filed a petition against the juvenile;
 - (B) Initiated the filing of a petition against the juvenile; or
 - (C) Requested juvenile's removal from the home. [Ark. Code Ann. § 9-27-317\(d\).](#)
- (2) When there is a reasonable likelihood that juvenile will be committed to an institution. [Ark. Code Ann. § 9-27-317\(e\).](#)
- (3) When a juvenile has been designated as an extended jurisdiction juvenile offender. [Ark. Code Ann. § 9-27-317\(f\).](#)
- (4) When a juvenile is in DHS custody, including DYS. [Ark. Code Ann. § 9-27-317\(g\).](#)

Parent Waiver of Counsel

TPR reversed because trial judge erred in finding that appellant had waived her right to counsel. In order to establish a voluntary and intelligent waiver, the judge must:

- (1) *Explain the desirability of having the assistance of counsel; and,*
- (2) *Advise the parent of the drawbacks and disadvantages of self-representation so that the record will establish that he/she knows what he/she is doing and that he or she has made the choice with his or her eyes wide open.* [Battishill v. Ark. Dep't of Human Servs., 78 Ark. App. 68 \(2002\).](#)

The Arkansas Supreme Court reversed the Arkansas Court of Appeals and held that appellant's request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, because her request did not satisfy constitutional standards for the waiver of counsel. Waiver of counsel valid only if:

- (1) *Request is unequivocal and timely asserted;*

- (2) *There has been a knowing and intelligent waiver of the right to counsel; and,*
- (3) *The defendant has not engaged in conduct that would prevent the fair and orderly exposition of the issues.* [Bearden v. Ark. Dep't of Human Servs., 344 Ark. 317 \(2001\).](#)

IX. DHS CASE PLANS

Development

A case plan shall be developed in:

- (1) All dependency-neglect cases; and
- (2) Any case involving an out-of-home placement. Ark. Code Ann. § 9-27-402(a).

DHS shall be responsible for developing case plans in all dependency-neglect cases, and in FINS or delinquency cases when custody is transferred to the agency, pursuant to Arkansas Code Annotated section 9-27-328. Ark. Code Ann. § 9-28-111(a).

The case plan shall be developed in consultation with the:

- (1) Juvenile's parent, guardian, or custodian;
 - (A) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available.
 - (B) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan.
- (2) Juvenile, if appropriate;
- (3) Juvenile's foster parents;
- (4) CASA, if appointed to case;
- (5) Juvenile's attorney ad litem; and
- (6) All parties' attorneys. Ark. Code Ann. § 9-28-111(a)(1).

Filed with Court

The case plan shall be developed and filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner. Ark. Code Ann. § 9-28-111(a)(2)(A).

If DHS does not have sufficient information prior to the adjudication hearing to complete all of the case plan, it shall complete those parts for which information is available. Ark. Code Ann. § 9-28-111(a)(2)(B).

All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing. Ark. Code Ann. § 9-28-111(a)(2)(C).

Signed and Distribution

Case plans shall be signed and distributed to all parties and distributed to the juvenile's attorney ad litem, CASA, if appointed, and foster parents, if available. Ark. Code Ann. § 9-28-111(a)(3).

Modifications

Case plans shall be subject to modification based on changing circumstances. Ark. Code Ann. § 9-28-111(a)(4)(A).

All parties to the case plan shall be notified of any substantive change to the case plan. Ark. Code Ann. § 9-28-111(a)(4)(B).

A substantive change to a case plan includes without limitation a change:

- (1) in juvenile's placement;
- (2) in the visitation rights of any party; or
- (3) in the goal of the plan. Ark. Code Ann. § 9-28-111(a)(4)(C).

Case Plan Contents for In-Home Services

The case plan shall include the following requirements:

- (1) A description of the problems being addressed;
- (2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
- (3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;
- (4) The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and
- (5) A description of how the juvenile's health and safety will be protected. Ark. Code Ann. § 9-28-111(b).

Case Plan Contents for Out-of-Home Placement Services

The case plan must include the following requirements:

- (1) A description of the problems being addressed;
- (2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;

- (3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;
- (4) The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined;
- (5) A description of the permanency goal;

If the goal at PPH and fifteenth-month hearing is not adoption, DHS shall document a compelling reason why TPR is not in the juvenile's best interest.

- (6) The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile, and the remediation of which will determine the return of the juvenile to the home;
 - (7) A description of the type of out-of-home placement selected for the juvenile including a discussion of the appropriateness of the placement;
 - (8) A plan for addressing the needs of the juvenile while the placement, with an emphasis on the health and safety safeguards in place for the child, including a discussion of the services provided within the last six months;
 - (9) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken;
- The plan may include any person or agency that shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile.
- (10) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;
 - (11) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services;

The purposes of services shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life where possible, and promote the reunification of the juvenile with the parent, guardian or custodian.

- (12) To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. § 675(1);
- (13) A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;
- (14) A description of the location of siblings, including documentation of the efforts made to place siblings removed from their home in the same placement, unless the department documents that a joint placement would be contrary to the safety or well-being of any of the siblings; and documentation of the efforts made to provide for frequent visitation or other ongoing interaction between the siblings in the case of siblings removed from their home who are not placed together, unless the department documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.
- (15) When appropriate for a juvenile age sixteen (16) and over, the case plan must also include a written description of the programs and services which will help the juvenile prepare for the transition from foster care to independent living;
- (16) A plan for ensuring the placement of the child in foster care that takes into account the appropriateness of the current educational setting and the proximity of the school in which the child is enrolled at the time of placement, as required under section 9-27-103 [Repealed - now located at 9-28-113]; and
 - (A) An assurance that the department has coordinated with appropriate local educational agencies to ensure that the child remains at the school where the child is enrolled at the time of placement; or
 - (B) If remaining at the school is not in the best interest of the child, assurances by the department and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school; and
 - (C) An assurance that each child who has attained the minimum age for compulsory school attendance is a full-time elementary or secondary school student or has completed secondary school.
 - (D) For purposes of this section, "elementary or secondary school student" means, with respect to a child, that the child is:
 - (i) Enrolled, or in the process of enrolling, in a public elementary or secondary school; or
 - (ii) Home schooled under section 6-15-501 et seq.;
 - (iii) Enrolled in a private elementary or secondary school; or

- (iv) Incapable of attending school on a full-time basis due to the medical condition of the child, and the medical condition incapability is supported by regularly updated information in the case plan.
- (17) A transitional plan pursuant to Arkansas Code Annotated section 9-27-363 to provide assistance and support to the juvenile; and
- (18) A written notice to the parent(s) that failure of the parent(s) to comply substantially with the case plan may result in the termination of parental rights, and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself. Ark. Code Ann. § 9-28-111(c).

Court Approval Required

The case plan is subject to court review and approval. Ark. Code Ann. § 9-27-402(b); Ark. Code Ann. § 9-28-111(d).

Participation Not Admission

A parent's, guardian's or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect. Ark. Code Ann. § 9-27-402(c); Ark. Code Ann. § 9-28-111(e).

X. DIVERSION

Diversion Requirements

Delinquency Diversion - the prosecuting attorney may attempt to make a delinquency diversion upon:

- (1) Consultation with intake officer;
- (2) Determination that diversion is in the best interest of the juvenile and community; and
- (3) Consent of the juvenile and his parent, guardian, or custodian. Ark. Code Ann. § 9-27-323(a).

FINS Diversion - the intake officer may make a FINS diversion upon:

- (1) Determination that diversion is in the best interest of the juvenile and community;
- (2) Consent of petitioner; and
- (3) Consent of juvenile and his parent, guardian, or custodian. Ark. Code Ann. § 9-27-323(b).

Diversion Conditions

- (1) Juvenile admits involvement in delinquent or FINS act.
- (2) Intake officer advises juvenile and parent of right to refuse a diversion and right to demand the filing of a petition.
- (3) Juvenile shall enter into diversion agreement voluntarily and intelligently with advice of counsel or with consent of parent, guardian or custodian, if no counsel.
- (4) Supervision or referral of the juvenile to public or private agency for services shall not exceed six (6) months.
- (5) All other diversion agreements shall not exceed nine (9) months.
- (6) Juvenile and parent, guardian, or custodian have the right to terminate the diversion agreement at any time and to request the filing of a petition and a formal adjudication. Ark. Code Ann. § 9-27-323(c).

Diversion Agreement Terms

Agreement shall:

- (1) Be in writing in simple, ordinary and understandable language;

- (2) State that agreement was entered into voluntarily by juvenile;
- (3) Name attorney or others who advised juvenile to enter agreement; and
- (4) Be signed by:
 - (A) all parties to agreement, and
 - (B) prosecutor, if delinquent act would constitute a felony if committed by an adult, or
 - (C) prosecuting authority if FINS case. Ark. Code Ann. § 9-27-323(d)(1).

Diversion agreement shall be limited to:

- (1) Non-judicial probation under supervision of intake or probation officer for a period during which the juvenile may be required to comply with specified conditions concerning his conduct and activities;
- (2) Participation in a court-approved education, counseling or treatment program; or
- (3) Participation in a court-approved Teen Court or Juvenile Drug Court Program;
- (3) Enrollment in the Regional Education Career Alternative School. Ark. Code Ann. § 9-27-323(e).

Copies of diversion agreement shall be given to the juvenile, juvenile's counsel, juvenile's parent(s), guardian, or custodian and the intake officer for case file. Ark. Code Ann. § 9-27-323(d)(2).

Diversion Fee

A juvenile intake or probation officer may charge a diversion fee only after review of an affidavit of financial means and a determination of the juvenile's or juvenile's parent's, guardian's, or custodian's ability to pay. Ark. Code Ann. § 9-27-323(i)(1).

The diversion fee shall not exceed \$20 a month. Ark. Code Ann. § 9-27-323(i)(2).

The court may direct that the fees be collected by the juvenile officer, sheriff, or court clerk in the county in which the fee is charged. Ark. Code Ann. § 9-27-323(i)(3).

The officer designated to collect diversion fees shall maintain receipts and account for all incoming fees and shall deposit the fees at least weekly in the county treasury of the county where the fees are collected and the diversion services provided. Ark. Code Ann. § 9-27-323(i)(4).

The diversion fees shall be deposited in the account with the juvenile service fee in accordance with Arkansas Code Annotated section 16-13-326. Ark. Code Ann. § 9-27-323(i)(5).

In judicial districts with more than one county, the judge may designate the treasurer of one county in the district as the depository of all the juvenile fees; however, the treasurer shall maintain separate account for the fees collected and expended in each county. Ark. Code Ann. § 9-27-323(j)(1)-(2).

Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year. Ark. Code Ann. § 9-27-323(j)(3).

These funds shall be used by agreement of the judge(s) who hear juvenile cases and the quorum court to provide services and supplies to juveniles at the discretion of the juvenile division of circuit court. Ark. Code Ann. § 9-27-323(j)(4).

Diversion Agreement Termination

The diversion agreement may be terminated by the juvenile and parent, guardian, or custodian at any time. Ark. Code Ann. § 9-27-323(c)(6).

The diversion agreement may be terminated by the prosecutor in a delinquency case or the petitioner in a FINS case if at any time during diversion agreement period the:

- (1) Juvenile or parent, guardian, or custodian declines to participate in diversion;
- (2) Juvenile fails without reasonable excuse to attend a scheduled conference;
- (3) Juvenile appears unable or unwilling to benefit from diversion; or
- (4) Intake officer obtains new information indicating that diversion efforts are not in best interests of juvenile or society. Ark. Code Ann. § 9-27-323(g).

Petition

If a diversion of a complaint has been made, a petition based on the events out of which the original complaint arose may be filed only during the period for which diversion agreement was entered into. Ark. Code Ann. § 9-27-323(f)(1).

Juvenile's compliance with all proper and reasonable terms of agreement is grounds for dismissal of the petition. Ark. Code Ann. § 9-27-323(f)(2).

Satisfactory Diversion Completion

- (1) Juvenile shall be dismissed without further proceedings;
- (2) Intake officer shall furnish written notice of dismissal to juvenile and parent, guardian or custodian; and

- (3) Complaint and agreement may be expunged by the court from the juvenile's file.
Ark. Code Ann. § 9-27-323(h).

Note: The Circuit Court, Juvenile Division Judge is not involved in the diversion process and should not even know about a diversion. If a diversion agreement is terminated and a petition filed, the juvenile may appear before that judge for adjudication. If the judge were aware of the diversion, he or she would also be aware that the juvenile had admitted complicity in the delinquent or FINS act.

XI. DETENTION

Time Constraints

Intake officer shall make detention decision within twenty-four (24) hours after juvenile is taken into custody for an act that would be a felony if committed by an adult, except as provided by Arkansas Code Annotated section 9-27-313(d)(1). Ark. Code Ann. § 9-27-313(d)(2).

Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall immediately notify the juvenile's parent, guardian or custodian of the location at which the juvenile is being held and the reasons for the juvenile's detention, if such notification has not previously taken place. Ark. Code Ann. § 9-27-322(a).

When a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian. Ark. Code Ann. § 9-27-313(d)(5).

If a juvenile is taken into custody on an allegation of delinquency, violation of DYS aftercare, violation of probation, or violation of a court order, a detention hearing shall be held by the court as soon as possible, but no later than seventy-two (72) hours after juvenile is taken into custody or, if seventy-two (72) hours ends on Saturday, Sunday or holiday, on the next business day. Otherwise, the juvenile shall be released. Ark. Code Ann. § 9-27-326(a).

The juvenile shall be released from custody, detention, or shelter care if the delinquency petition is not filed within twenty-four (24) hours after detention hearing or ninety-six (96) hours after juvenile is taken into custody, whichever is sooner. Ark. Code Ann. § 9-27-313(f).

Detention Limitations

Juveniles alleged or adjudicated dependent-neglected or FINS shall not be placed or detained in a:

- (1) Secure detention facility;
- (2) Facility utilized for detaining alleged or adjudicated juvenile delinquents; or
- (3) Facility utilized for detaining adults charged with or convicted of a crime. Ark. Code Ann. § 9-27-336(a).

FINS Detention Exceptions

When a juvenile has been away from home for more than twenty-four (24) hours and when the parent, guardian or other person contacted lives beyond a 50-mile driving distance or out of state. Ark. Code Ann. § 9-27-336(a)(1)(A).

Juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility. Such holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults. Ark. Code Ann. § 9-27-336(a)(1)(B).

Juvenile shall be separated from detained juveniles charged or held for delinquency. Juvenile may not be held for more than six (6) hours if the parent, guardian, or other person contacted lives in the state, or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state. Ark. Code Ann. § 9-27-336(a)(1)(C).

An adjudicated FINS may be held in a juvenile detention facility when the court finds that the juvenile violated a valid court order.

A valid court order shall include any order of a circuit court judge to a juvenile who has been brought before the court and made subject to a court order. The juvenile who is the subject of the order shall receive full due process rights.

The court acted without jurisdiction to hold the appellant in contempt for failure to abide by a no-contact order after the appellant reached the age of 18 because the court lacked jurisdiction related to the original FINS petition. Although punishment for contempt is an inherent power of the court, it must be based on a valid court order of a court having jurisdiction. [Black v. State, 2010 Ark. App. 78.](#)

A juvenile held under this subsection shall be separated from detained juveniles charged or held for delinquency. Such holding shall not occur in any facility utilized for incarceration of adults. Ark. Code Ann. § 9-27-336(a)(2).

The trial court committed a FINS juvenile to DYS upon finding that the juvenile was in criminal contempt and for violation of a DYS aftercare plan for a prior commitment from another jurisdiction. DHS filed a motion to set aside the commitment order arguing that the juvenile had not been found guilty of a crime and had not been adjudicated delinquent. An emergency writ of habeas corpus petition was filed in the Saline County Circuit Court where the juvenile was being held, but it was denied. The supreme court found that criminal contempt is a crime in the ordinary sense, but held that the juvenile had been denied the right of due process in reaching that conclusion. Arkansas Code Annotated section 9-27-336(a) provides the FINS contempt detention exception. The court must find that

the juvenile violated a valid court order and the juvenile shall receive full due process rights. Appellant argued that the juvenile was never served with a copy of the petition or a written order to show cause and he was not provided defense counsel.

Arkansas Code Annotated section 9-27-316 makes it clear that in both delinquency and FINS cases a juvenile has a right to counsel and to an attorney ad litem who represents the best interests of the juvenile, but that this is not intended to be the same person. Because the juvenile was denied counsel, the trial court exceeded its authority and the order was thus invalid. The petitioner's writ of habeas corpus was granted. Since the writ of habeas is granted the writ of certiorari is moot. [Arkansas Dep't of Human Servs. v. Mainard, 358 Ark. 204 \(2004\).](#)

Juveniles shall not be placed or confined in adult jail or lock-up except when:

- (1) Juvenile formally transferred from juvenile division of circuit court to the criminal division of circuit court and against whom felony charges have been filed; Ark. Code Ann. § 9-27-336(b)(1).
- (2) Juvenile for whom prosecutor has discretion to charge as adult and felony charges have been filed in the criminal division of circuit court; Ark. Code Ann. § 9-27-336(b)(1).

Note: Under both the preceding provisions of the juvenile code and federal law, a juvenile who will be tried as an adult may be jailed as an adult. 28 C.F.R. 31.303(e)(2) (7/1/90). However, the Arkansas Jail Standards require that pretrial detainees under 18 years of age be separated by sight and sound from adult pretrial detainees or convicted persons.

- (3) An alleged delinquent juvenile may be held in adult jail or lock-up for up to six (6) hours, for purposes of identification, processing, or arranging for release or transfer, provided juvenile is separated by sight and sound from adults. Holding shall be limited to minimum time necessary and shall not include transportation time to an alternative facility. Ark. Code Ann. § 9-27-336(b)(2).
- (4) An alleged delinquent juvenile may be held in adult jail or lock-up awaiting initial appearance before judge for up to twenty-four (24) hours (excluding weekends and holidays) if all the following conditions exist:
 - (A) alleged act would be a misdemeanor or felony if committed by an adult or is a violation of Arkansas Code Annotated section 5-73-119 (minor in possession of a handgun);

- (B) geographic area with jurisdiction over juvenile is outside metropolitan statistical area, pursuant to the United States Census Bureau's current designation;

Note: Counties within metropolitan statistical areas where this holding is not available are Benton, Cleveland, Conway, Craighead, Crawford, Crittenden, Faulkner, Franklin, Garland, Grant, Jefferson, Lincoln, Lonoke, Madison, Miller, Perry, Poinsett, Pulaski, Saline, Sebastian, and Washington.

- (C) no acceptable alternative placement for the juvenile exists; and
 - (D) juvenile is separated by sight and sound from adults. Ark. Code Ann. § 9-27-336(b)(3)(A).
- (5) A juvenile awaiting an initial appearance and being held pursuant to the above twenty-four (24) hour exception may be held for an additional period, not to exceed twenty-four (24) hours, if the following conditions exist:
- (A) The conditions of distance to be traveled or lack of highway, road, or other ground transportation do not allow for court appearance within twenty-four (24) hours;
 - (B) All of the above conditions set forth in Arkansas Code Annotated section 9-27-336(b)(3) exist;
 - (C) Criteria will be adopted by the Governor or his designee to establish what distance, highway or road conditions or ground transportation limitations will provide a basis for holding a juvenile in adult jail or lockup under this exception. Ark. Code Ann. § 9-27-336(b)(3)(B).

Detention Release

A detention facility shall not release a serious offender in order to house a more serious offender, except by order of the judge who committed the more serious offender. Ark. Code Ann. § 9-27-336(d).

XII. HEARINGS OVERVIEW

Notice of Hearing

Contents of notice

- (1) Describes the nature of hearing; and
- (2) Indicates time, date and place of hearing; and
- (3) Advises of right to be present, heard, and represented by counsel and appointed counsel, if indigent. Ark. Code Ann. § 9-27-303(37)(A).

Notice shall be served in manner provided by Rule 5 of the Arkansas Rules of Civil Procedure. Ark. Code Ann. § 9-27-303(37)(B).

DHS shall provide notice of any review or hearing to foster parents and pre-adoptive parents of a child in DHS custody. Ark. Code Ann. § 9-27-325(l)(1).

Relative caregivers shall be given notice by the original petitioner in the juvenile matter. Ark. Code Ann. § 9-27-325(l)(2).

Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceedings solely on the basis of their right to notice and the opportunity to be heard. Ark. Code Ann. § 9-27-325(l)(3)(B).

A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

- (1) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;
- (2) The grandparent was the primary care giver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;
- (3) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and
- (4) Notice to a grandparent under this subsection shall be given by DHS. Ark. Code Ann. § 9-27-325(m)(1)(A).

A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

- (1) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;
- (2) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and
- (3) Continuous custody occurred within one (1) year of the date the child custody proceeding was initiated. Ark. Code Ann. § 9-27-325(m)(1)(B).

For purposes of this subsection, “grandparent” does not mean a parent of a putative father of the child. Ark. Code Ann. § 9-27-325(m)(2).

Right To Jury

Only extended juvenile jurisdiction offenders have a right to a jury trial.

The juvenile shall be advised of this right by the court following the determination that the juvenile shall be tried as an extended juvenile jurisdiction offender.

This right may be waived by a juvenile only after being advised of his or her rights and after consultation with his or her attorney.

The waiver shall be in writing and signed by the juvenile’s attorney. Ark. Code Ann. § 9-27-325(a).

Note: A.C.A. § 9-27-505(c)(2) provides that waiver of jury in EJJ case shall be signed by juvenile, juvenile’s attorney and juvenile’s parent or guardian and that the court shall inquire on the record as to whether the waiver was made in a knowing, intelligent and voluntary manner.

The U.S. Supreme Court held that juvenile proceedings are not criminal proceedings within the meaning of the Sixth Amendment. The applicable standard in juvenile proceedings is fundamental fairness. While notice, right to counsel, right to confrontation and cross-examination, and the burden of proof flow from Due Process, a jury trial is not a necessary component of the fact-finding process. [McKeiver v. Pennsylvania, 403 U.S. 528 \(1971\)](#).

The Arkansas Court of Appeals held that the Juvenile Code of 1989 does not represent a “substitute for prosecution,” requiring a jury trial for an alleged delinquent; and that the due process standard of fundamental fairness is maintained without affording a jury trial. [Valdez v. State, 33 Ark. App. 94, 801 S.W.2d 659 \(1991\)](#).

Pleadings & Notice of Appearance

Defendants not required to file written responsive pleading in order to be heard by court. Ark. Code Ann. § 9-27-325(b)(1).

In dependency-neglect procedures, counsel shall file a notice of appearance immediately upon acceptance of representation and shall serve all parties, if not appointed by the court in an order provided to all parties. Ark. Code Ann. § 9-27-325(b)(2).

Defendants & Witnesses

At the time set for hearing, the court may:

- (1) Proceed only if juvenile is present or excused for good cause; or
- (2) Continue the case upon determination that presence of an adult defendant is necessary. Ark. Code Ann. § 9-27-325(c)(1).

After determination that a necessary party is not present, the court may issue:

- (1) Contempt order if the juvenile was served with an order to appear, or
- (2) Order to appear with time and place of hearing, if the juvenile was served with the notice of hearing. Ark. Code Ann. § 9-27-325(c)(2).

All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure. Ark. Code Ann. § 9-27-325(g).

Court of Record

Records of proceedings shall be kept in accordance with rules promulgated by the Arkansas Supreme Court. Ark. Code Ann. § 9-27-325(d)(2).

Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it. [Supreme Court Administrative Order Number 4](#).

Rules

Unless otherwise indicated, the Arkansas Rules of Evidence shall apply. Ark. Code Ann. § 9-27-325(e)(1).

Note: Arkansas Code Annotated section 9-27-315(e) states that probable cause hearings are miscellaneous hearings. Therefore, the Rules of Evidence are not applicable.

The Rules of Civil Procedure shall apply to all proceedings. Ark. Code Ann. § 9-27-325(f).

The Rules of Criminal Procedure shall apply to delinquency proceedings. Ark. Code Ann. § 9-27-325(f).

The Arkansas Rules of Criminal Procedure apply to delinquency proceedings.
[Jones v. State, 347 Ark. 409 \(2002\)](#).

Burden of Proof

Preponderance of the Evidence applies to the following hearings:

- (1) Dependency-Neglect; Ark. Code Ann. § 9-27-325(h)(2)(B).
- (2) Families In Need of Services (FINS); Ark. Code Ann. § 9-27-325(h)(2)(B).
- (3) Probation Revocation; Ark. Code Ann. § 9-27-325(h)(2)(B).
- (4) EJJ Designation; and Ark. Code Ann. § 9-27-503(b).
- (5) EJJ Review. Ark. Code Ann. § 9-27-507(b); Ark. Code Ann. § 9-27-509(b)(3).

Clear and Convincing Evidence applies to the following hearings:

- (1) Termination of Parental Rights (TPR); Ark. Code Ann. § 9-27-325(h)(2)(C).

The U.S. Supreme Court held that before a state may sever the rights of parents to their natural child, Due Process requires that the state support its allegations by at least clear and convincing evidence. [Santosky v. Kramer, 455 U.S. 745 \(1982\)](#).

- (2) Transfer; Ark. Code Ann. § 9-27-325(h)(2)(C).

The burden of proof in a hearing on the transfer of a case from circuit court to juvenile court is “clear and convincing evidence.” A trial court’s decision to try a juvenile as an adult must be supported by clear and convincing evidence. [Heagerty v. State, 335 Ark. 520 \(1998\)](#); [Jones v. State, 332 Ark. 617 \(1998\)](#); [Rhodes v. State, 332 Ark. 516 \(1998\)](#); [Wright v. State, 331 Ark. 173 \(1998\)](#).

- (3) No Reunification Services; and Ark. Code Ann. § 9-27-325(h)(2)(C); Ark. Code Ann. § 9-27-365(c).
- (4) Juvenile Sex Offender Registration. Ark. Code Ann. § 9-27-356(f)(2).

Beyond a Reasonable Doubt in the following hearings:

- (1) Delinquency Adjudication; and Ark. Code Ann. § 9-27-325(h)(2)(A).
- (2) EJJ Adjudication. Ark. Code Ann. § 9-27-505(f).

The U.S. Supreme Court held that Due Process explicitly protects against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which the defendant is charged. This burden extends to children as well as adults. [In Re Winship, 397 U.S. 358 \(1970\)](#).

Open v. Closed Hearings

Court has discretion to conduct closed hearings except:

- (1) A juvenile has a right to open hearing in delinquency proceedings.

A gag order that prohibited the media from photographing juveniles and their families in public places around the courthouse, even though the proceeding was open to the public and a photograph of a juvenile had been published, was overbroad and a prior restraint in violation of the First Amendment; the statutory policy prohibiting revelation of the name and identity of the juvenile had already been thwarted. Pursuant to Administrative Order Number 6, the trial judge has the authority to exclude photographs in areas immediately adjacent to her courtroom but it does not include public streets and sidewalks outside the courthouse. [Ark. Democrat-Gazette v. Zimmerman, 341 Ark. 771, 20 S.W.3d 301 \(2000\)](#).

- (2) Adoption hearings shall be closed as provided in the revised Uniform Adoption Act.
- (3) All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed. [Ark. Code Ann. § 9-27-325\(i\)](#).

Foster Parents, Preadoptive and Custodial Parents' and Relative Rights

DHS shall provide notice to foster parents and preadoptive parents of any hearing with respect to a child in their care. The petitioner shall provide such notice to relative caregivers. [Ark. Code Ann. § 9-27-325\(l\)\(1\)-\(2\)](#).

Foster parents, preadoptive parents and relative caregivers shall have the right to be heard in any proceeding, and the court shall allow them the right to be heard at any proceeding concerning a child in their care. [Ark. Code Ann. § 9-27-325\(l\)\(3\)\(A\)-\(C\)](#).

Foster parents, preadoptive parents, and relative caregivers shall not be made parties solely on the basis of their right to notice and the opportunity to be heard. [Ark. Code Ann. § 9-27-325\(l\)\(3\)\(B\)](#).

Grandparents and adult relatives shall right to notice within thirty (30) days after juvenile is transferred to DHS custody and includes:

- (1) Statement that the juvenile has been removed from the parent;
- (2) Option to participate in care of, placement with, and visitation with the child, and options may be lost by failing to respond to notice;
- (3) Requirements to become a provisional foster home and the additional services and supports available for children in a foster home; and
- (4) If kinship guardianship is available, how the relative could enter that agreement with DHS. [Ark. Code Ann. § 9-28-107\(b\), \(d\)](#).

72-Hour Hold

A juvenile division of circuit court judge during juvenile proceedings concerning the child or siblings of the child may take a child into protective custody if:

- (1) The child is subject to neglect under Arkansas Code Annotated section 12-18-103(14)(B) and DHS assesses the family and determines that the newborn and any other children, including siblings, under the custody or care of the mother are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother; Ark. Code Ann. § 12-18-1001.

Neglect shall also include causing a newborn to be born with an illegal substance (a drug prohibited to be used or possessed without a prescription under the Arkansas Code Annotated sections 5-1-101 et seq.) present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the newborn. A test of the child's or mother's bodily fluids or bodily substances may be used as evidence to establish neglect pursuant to this subsection. Ark. Code Ann. § 12-18-103(14)(B).

- (2) The child is dependent as defined by Ark. Code Ann. § 9-27-303(17); or

Dependent juvenile means:

- a child of a parent in DHS custody;
- a child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child; however if the reason for incarceration is related to the health and safety of the child, the child is not dependent;
- a child whose parent or guardian is incapacitated so they cannot care for the juvenile, and they have no appropriate relative or friend to care for the child;
- a child whose custodial parent dies and no appropriate relative or friend is able to care for the child;
- a child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- a safe-haven baby; or
- a child who has disrupted his or her adoption and the adoptive parents have exhausted resources available to them; or
- a child who has been a victim of human trafficking as a result of threats, coercion, or fraud. Ark. Code Ann. § 9-27-303(17).

- (3) Circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker presents an immediate danger to the health or physical well-being of the child. Ark. Code Ann. § 12-18-1001(a)(3).

Fitness to Proceed

In a juvenile delinquency proceeding where the juvenile's fitness to proceed is put at issue by a party or the court, the provisions of Arkansas Code Annotated sections 5-2-301 et seq. shall apply. Ark. Code Ann. § 9-27-325(j).

Appellant was not denied a fair and full defense to meaningfully challenge the state's mental evaluation where he stipulated that he was fit to proceed. E.S. v. State, 2013 Ark. App. 378.

A juvenile has a due-process right to have his competency determined prior to adjudication. Golden v. State, 341 Ark. 656 (2000).

Defenses

In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court. Ark. Code Ann. § 9-27-325(k).

Appellant was not denied a fair and full defense to meaningfully challenge the state's mental evaluation where he stipulated that he was fit to proceed and was given the opportunity to present his own expert witnesses as to why his Asperger's diagnosis affected his mental capacity. E.S. v. State, 2013 Ark. App. 378.

Double Jeopardy

No juvenile subjected to adjudication pursuant to delinquency petition shall be tried later on criminal charges based upon facts alleged in delinquency petition. Ark. Code Ann. § 9-27-319(a).

The U.S. Supreme Court held that double jeopardy applies to juvenile delinquency adjudications and that jeopardy attaches when the juvenile court, as the trier of the facts, begins to hear the evidence at the adjudicatory hearing. Breed v. Jones, 421 U.S. 519 (1975).

No juvenile tried for violation of criminal laws shall be subjected later to delinquency proceeding arising out of the facts that formed the basis of criminal charges. Ark. Code Ann. § 9-27-319(b).

Admissibility of Evidence

Juvenile adjudications of delinquency for an offense for which juvenile could have been tried as an adult may be made available to the prosecutor for use at sentencing if

juvenile is subsequently tried as an adult, and to determine if juvenile should be tried as an adult. Ark. Code Ann. § 9-27-309(a)(2); Ark. Code Ann. § 9-27-345.

No other evidence adduced against juvenile in any proceeding under the juvenile code, nor the fact of adjudication or disposition, shall be admissible evidence against such juvenile in any civil, criminal, or other proceeding. Ark. Code Ann. § 9-27-345(b)(1).

Home Studies

The court held that the trial court did not abuse its discretion in refusing to admit a Colorado home study into evidence in absence of someone who could be cross-examined as to its contents. Ark. Dep't of Human Servs. v. Huff, 347 Ark. 553, 65 S.W.3d 880 (2002).

Drug Testing

Upon motion of any party, the court may order the father, mother, or child submit to scientific testing for drug or alcohol abuse. Ark. Code Ann. § 9-27-325(e)(2)(A).

A written report of the test results prepared by the person conducting the test or under whose supervision or direction the test was performed, certified by an affidavit before a notary public, may be introduced evidence without calling the witness unless a motion challenging the test procedures or results has been filed within thirty (30) days before the hearing and bond is posted to cover cost of the person's appearance to testify. Ark. Code Ann. § 9-27-325(e)(2)(B).

If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one person witnessing the procedure or extraction, packaging, and mailing of samples and one person signing for the samples where the samples are subject to testing procedures. Submission of these affidavits with test results shall be competent evidence to establish chain of custody of specimens. Ark. Code Ann. § 9-27-325(e)(2)(C).

If a party refuses court ordered scientific testing for drug or alcohol abuse, that refusal shall be disclosed at trial and may be considered civil contempt of court. Ark. Code Ann. § 9-27-325(e)(2)(D).

Interstate Compact Placement of Children (ICPC)

In response to Arkansas Department of Human Services v Huff, 347 Ark. 553, 65 S.W.3d 880 (2002), Act 1309 of 2003 was amended in Senate Judiciary to amend the ICPC.

Placement means the arrangement for care of a child in the home of his or her parent, other relative, or non-agency guardian in a receiving state. Ark. Code Ann. § 9-29-201; Article II (d)(2).

Priority placement means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary because placement is with a relative and:

- (1) The child is under four (4) years of age, including older siblings sought to be placed in the same proposed placement;
- (2) The child is in an emergency placement;
- (3) The court finds that the child has a substantial relationship with the proposed placement resource; or
- (4) There is an unexpected dependency due to a sudden or recent incarceration, incapacitation, or death of a parent or guardian.

The state agency has thirty (30) days to complete a request for a priority placement. Requests for placement shall not be expedited or given priority except as outlined in this subsection. Ark. Code Ann. § 9-27-201; Article II (f).

Judicial Review: Provides that if the home study is denied, the sending state shall present the study to the judge who shall review the study and make specific findings of fact regarding the concerns outlined in the home study. If the court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement. Ark. Code Ann. § 9-29-201; Article III(e).

At a probable cause hearing, the AAL recommended that the child be returned to the home of the paternal grandparents. OCC objected and requested a home study pursuant to ICPC, but stated when asked by the judge that the only services DCFS would offer the mother would be parenting classes. DHHS argued that the court abused its discretion by not complying with ICPC. The court stated that the Arkansas Supreme Court made it clear in Huff that ICPC is limited to placement of a child in foster care or dispositions preliminary to adoption. DHHS argued that amendments to ICPC post Huff to the definition of foster care to include a child parent(s) or relative had remedied Huff. The court stated that the new definition makes it clear that whether a situation is considered foster care depends not upon the relationship of the care giver, but upon the reason for the placement. The circuit court did not place the child in foster care with anyone, it restored custody and ICPC does not apply. [Ark. Dep't of Human Servs. v. Jones., 97 Ark. App. 267, 248 S.W.3d 507 \(2007\).](#)

The court found that ICPC was intended to govern the placement of children in substitute arrangements for parental care, such as foster care or adoption. ICPC does not apply when a child is returned by the sending state to a natural parent residing in another state. [Ark. Dep't of Human Servs. v. Huff, 347 Ark. 553, 65 S.W.3d 880 \(2002\).](#)

Mediation

The court may order any juvenile case or controversy pending before it to mediation. Ark. Code Ann. § 16-7-202(b).

If the court orders mediation the parties may:

- (1) Choose an appropriate mediator from the Arkansas Alternative Dispute Resolution Commission roster (a mediator who meets the commission's requirements for that type of case); or
- (2) Select a mediator not on the commission's roster IF approved by the court. Ark. Code Ann. § 16-7-202(c).

A party may move to dispense with the order to mediate for good cause shown, which may include, but is not limited to, a party's inability to pay for the costs of mediation. Ark. Code Ann. § 16-7-202(d).

A communication relating to the subject matter of any civil or criminal dispute made by a participant in a dispute resolution process, whether before or after the institution of formal judicial proceedings, is confidential and is not subject to disclosure and may not be used as evidence against a participant in any judicial or administrative proceeding except when it conflicts with other legal requirements for disclosure of communications or materials. Ark. Code Ann. § 16-7-206(a), (c).

The issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure. Ark. Code Ann. § 16-7-206(c).

Any record or writing made at a dispute resolution process is confidential, and the participants or third party or parties facilitating the process shall not be required to testify in any proceedings related to or arising out of the matter in dispute or be subject to process requiring disclosure or production of information or data relating to or arising out of the matter in dispute. Ark. Code Ann. § 16-7-206(b).

Arkansas Youth Mediation Program

The Arkansas Youth Mediation Program operates from the law schools at the University of Arkansas at Fayetteville School of Law and the William H. Bowen University of Arkansas at Little Rock School of Law. Ark. Code Ann. § 9-31-404(a)(2).

The mediation program provides training and technical assistance to circuit courts as the court deems appropriate to mediate juvenile delinquency cases and FINS cases; Ark. Code Ann. § 9-31-404(b)(3); and dependency-neglect cases. Ark. Code Ann. § 9-31-404(b)(4).

The mediation program also offers law school courses and continuing education programs for lawyers and other professionals throughout Arkansas. Ark. Code Ann. § 9-31-404(b)(5).

XIII. DELINQUENCY PROCEEDINGS

Detention Hearings

Purpose

To determine whether a juvenile, who is taken into custody on an allegation of delinquency, violation of Division of Youth Services (DYS) aftercare, violation of probation, or violation of a court order, should be released or held prior to the substantive hearing. Ark. Code Ann. § 9-27-326(a).

Notice

Prior written notice of the time, place, and purpose of the hearing shall be given to the juvenile, juvenile's attorney, and juvenile's parent, guardian, or custodian. Ark. Code Ann. § 9-27-326(b)(1)-(3).

Hearing may proceed without notice to parent if the court finds that, after a reasonable diligent effort, petitioner was unable to notify parent, guardian, or custodian. Ark. Code Ann. § 9-27-326(b)(3)(B).

Time Constraints

The hearing shall be held as soon as possible, but no later than seventy-two (72) hours after juvenile is taken into custody on an allegation of delinquency, violation of DYS aftercare violation, violation of probation, or violation of a court order. Ark. Code Ann. § 9-27-326(a).

If the seventy-two (72) hours ends on a weekend or holiday, the hearing shall be held on the next business day or the juvenile shall be released. Ark. Code Ann. § 9-27-326(a).

If the juvenile is taken into custody on an alleged delinquency and no delinquency petition is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours after juvenile is taken into custody, whichever is sooner, the juvenile shall be discharged from custody, detention, or shelter care. Ark. Code Ann. § 9-27-313(f).

Burden of Proof

Petitioner has the burden of proof by clear and convincing evidence that the restraint on the juvenile's liberty is necessary and that no less restrictive alternative will reduce the risk of flight, serious harm to property, or the physical safety of juvenile or others. Ark. Code Ann. § 9-27-326(c).

Court's Duties

During the detention hearing, the court shall inform juvenile of the:

- (1) reasons continued detention is sought;
- (2) juvenile's Fifth Amendment right against self-incrimination;
- (3) juvenile's right to counsel; and
- (4) juvenile's right to communicate with attorney, parent, guardian, or custodian before hearing proceeds further and that reasonable means will be provided for such communication. Ark. Code Ann. § 9-27-326(d)(1).

The court shall admit testimony and evidence relevant only to determine whether probable cause exists that the juvenile committed the alleged offense and that detention is necessary. Ark. Code Ann. § 9-27-326(d)(2).

The court shall assess the following factors to determine whether to release juvenile prior to further hearings:

- (1) place and length of residence;
- (2) family relationships;
- (3) references;
- (4) school attendance;
- (5) past and present employment;
- (6) juvenile and criminal records;
- (7) juvenile's character and reputation;
- (8) nature of charge being brought and any mitigating or aggravating circumstances;
- (9) whether detention is necessary to prevent imminent bodily harm to juvenile or another;
- (10) possibility of additional violations if juvenile is released;
- (11) factors which indicate that juvenile is likely to appear as required; and
- (12) whether conditions should be imposed on juvenile's release. Ark. Code Ann. § 9-27-326(d)(3).

The court shall release the juvenile upon finding no probable cause exists that juvenile committed the alleged offense. Ark. Code Ann. § 9-27-326(e)(1).

Upon finding detention unnecessary, the court shall release juvenile:

- (1) upon juvenile's recognizance;
- (2) upon an order to appear;
- (3) to parent upon written promise to bring juvenile before court when required;
- (4) to qualified person or agency (not DHS) agreeing to supervise and assist juvenile in appearing in court;
- (5) under supervision of probation officer or other public official (not DHS);
- (6) upon reasonable restrictions on juvenile's activities, movements, associations and residences;
- (7) upon bond to parent, guardian, or custodian; or
- (8) under reasonable restrictions to insure appearance of juvenile's activities. Ark. Code Ann. § 9-27-326(e)(2).
- (9) Upon finding that bond is only means of insuring juvenile's appearance, the court may require an unsecured bond in an amount set by the court as follows:
 - (A) The bond may be accompanied by a deposit of cash or security equal to 10% of the face amount set by the court that shall be returned if juvenile does not default on performance of conditions under bond; or
 - (B) The bond may be secured by deposit of full amount in cash, property, or obligation of qualified securities. Ark. Code Ann. § 9-27-326(e)(3).

If the juvenile is in DHS custody as a result of a FINS or D-N petition and the court does not detain the juvenile, then any placement decisions shall be left to the judge with the FINS or D-N case. Ark. Code Ann. § 9-27-326(f)(1).

The prosecutor shall file entry of the delinquency order within ten (10) days in the juvenile's FINS or D-N case. Ark. Code Ann. § 9-27-326(f)(2).

DHS Investigation

If the court releases the juvenile, the court may, if necessary for the best interest of the juvenile, require DHS to immediately initiate an investigation as to whether juvenile is in immediate danger or a situation exists whereby the juvenile is dependent-neglected. Ark. Code Ann. § 9-27-326(e)(5)(A).

The court shall not place preadjudicated juveniles in DHS custody except as provided by Ark. Code Ann. § 12-12-516 [repealed]. [Ark. Code Ann. § 9-27-326\(e\)\(5\)\(B\).](#)

Modification Order

The court may modify orders of conditional release upon notice, hearing, and good cause shown. [Ark. Code Ann. § 9-27-326\(e\)\(4\).](#)

DHS's appeal of the juvenile court's order to place a juvenile in DHS custody at a detention hearing was dismissed for lack of standing. Any relief to which DHS is entitled must be afforded to the trial court. If DHS contends that the juvenile court is without jurisdiction to place the juvenile in its custody or has exercised a power not authorized by law, its remedy is to seek relief by way of a collateral attack upon the judgment through a writ of prohibition or a petition for writ of certiorari. [Ark. Dep't of Human Servs. v. Strickland, 62 Ark. App. 215 \(1998\).](#)

A detention order is not a final order; therefore, it is not appealable. An order is final if it dismisses the parties from the court, discharges them from the action, or concludes their rights to the subject matter in controversy. The order must put the judge's directive into execution, ending the litigation, or a separable branch of it. Two justices concurred and reported that the court could reach the detention issue on direct appeal of an adjudication order. [K.W. v. State, 327 Ark. 205 \(1997\).](#)

The U.S. Supreme Court upheld a New York statute which authorized pre-trial detention upon a court's finding a serious risk that, before the next court date, the juvenile may commit an act which, if committed by an adult, would constitute a crime. The Court stated that preventive detention serves the state's interest of protecting both the juvenile and society and is compatible with fundamental fairness required by Due Process. The Court further found that the provisions for notice, a hearing prior to detention, and a formal probable cause hearing held within a short time thereafter, were sufficient procedural safeguards. [Schall v. Martin, 467 U.S. 253 \(1984\).](#)

Transfer Hearings

Purpose

The criminal division of the circuit court in which a delinquency petition or criminal charges have been filed shall conduct a transfer hearing to determine whether to transfer the case to another division of the circuit court. [Ark. Code Ann. § 9-27-318\(e\).](#)

Note: Pursuant to Arkansas Code Annotated section 9-27-318(m), the circuit court may conduct a transfer hearing and an extended juvenile jurisdiction designation hearing at the same time.

Motion to Transfer

Upon the motion of the court or any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a hearing to determine whether to transfer the case to another division of circuit court. Ark. Code Ann. § 9-27-318(e).

The juvenile court does not have authority to sua sponte transfer jurisdiction to circuit court. [Chavez v. State, 71 Ark. App. 29 \(2000\).](#)

The ten-day response requirement of Rule 6(c) of the Arkansas Rules of Civil Procedure is not inflexible. A four-day notice of transfer hearing was a technical error that did not prejudice the defendant. A 3-justice dissent opined that the transfer from juvenile court to circuit court is a serious matter and that procedural rules must be followed when “fundamental due process is at issue.” [Smith v. State, 307 Ark. 223, 818 S.W.2d 945 \(1991\).](#)

The party seeking the transfer has the burden of proof. [Wright v. State, 331 Ark. 173 \(1995\).](#)

Time Constraints

Transfer hearing must be held within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the transfer motion. Ark. Code Ann. § 9-27-318(f).

Burden of Proof

The burden of proof at a transfer hearing is clear and convincing evidence. Ark. Code Ann. § 9-27-318(h)(2); Ark. Code Ann. § 9-27-325(h)(2)(C).

Transfer Hearing Factors

The court shall consider all factors in making a decision to retain jurisdiction or transfer the case as follows:

- (1) the seriousness of the alleged offense and whether the protection of society requires prosecution in criminal division of circuit court;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

- (3) whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) the culpability of the juvenile including the level of planning and participation in the alleged offense;
- (5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

Appellant, charged with capital murder and aggravated robbery, argued that the circuit court abused its discretion in allowing the State to introduce evidence of a nolle-prossed juvenile adjudication. However, appellant failed to preserve the issue for appeal and it does not fall within one of the four recognized exceptions to the contemporaneous objection rule, known as the Wicks exceptions. [C.L. v State, 2012 Ark. App. 377.](#)

Appellant, charged with aggravated robbery, theft of property and theft by receiving, argued that the circuit court erred in allowing the State to introduce evidence of a prior juvenile court proceeding. At the transfer hearing defense counsel objected to the evidence based on relevance and on appeal a specific objection was based on the juvenile confidentiality statute. The court will not address an argument raised for the first time on appeal. [C.L. v State, 2012 Ark. App. 374.](#)

- (6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
- (7) whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile before the expiration of the juvenile's 21st birthday;

Appellant, at age 16, was charged with aggravated robbery, theft of property, and two counts of criminal mischief in the second degree as a result of a carjacking. Appellant argued that the court erred in finding that there was little testimony or evidence that he could be rehabilitated. The trial court found that there were rehabilitative services available and two witnesses, including his current juvenile probation officer that testified that he was salvageable. The evidence demonstrated that appellant had been offered services in

the juvenile system and persisted in delinquent behavior involving serious aggressive conduct relating to the protection of society. Rehabilitation is one factor for the court to consider and the moving party has the burden by clear and convincing evidence that the case should be transferred to the juvenile division. A.H. v. State, 2013 Ark. App. 419.

- (8) whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
- (9) written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (10) any other factor deemed relevant by the judge. Ark. Code Ann. § 9-27-318(g).

*Seventeen-year-old appellant argued that there was no evidence presented at the hearing regarding the juvenile-transfer statutory factors, listed in Arkansas Code Annotated section 9-37-318(g), and that the circuit court relied solely upon the criminal information, in violation of the supreme court's holding in *Thompson v. State*, 330 Ark. 746 (1997). The court of appeals held that there was evidence including an officer's affidavit and that the circuit court considered evidence that certain programs and facilities were not likely to provide rehabilitation to the juvenile. A.E.L. v. State, 2013 Ark. App. 706.*

Appellant, charged with four counts of aggravated robbery, four counts of theft of property, one count of theft by receiving, and one count of aggravated assault argued that the trial court's denial of his motion was clearly erroneous. The circuit court was affirmed where the evidence demonstrated that the allegations were serious, violent, and premeditated. They were committed against persons and property. Appellant had prior delinquent behavior and had been offered services but continued with his delinquent behavior. D.D.R. v. State, 2012 Ark. App. 329.

Appellant at the age of 17 was charged with Murder in the Second Degree. The appellate court noted that the trial court considered all the factors and made all the findings required by the transfer statute, some findings favored appellant while other did not, but found greater weight supported a decision to deny the motion to transfer. C.B. v State, 2012 Ark. 220.

Appellant at age 16 was charged with sexual assault in the second degree and rape. The appellate court noted that the trial court made the required statutory findings and placed a great weight on evidence that appellant in less than one month, in two separate incidents, invited two girls into his

truck for a ride home and sexually assaulted one and raped another in a premeditated, serious, and violent manner. The trial court also took into consideration that he acted alone, knew his conduct was wrong, and had no deficits in his family life that would excuse his conduct. The court also considered that he was now 17 and his chances for rehabilitation in the juvenile system. [Lewis v. State, 2011 Ark. App. 691.](#)

Appellant was charged with two counts of committing a terroristic act, two counts of aggravated assault, and one count of aggravated assault against a household member. Appellant's argument that the trial court failed to consider or misinterpreted the statutory factors was without merit. The court is not required to give equal weight to each factor. Appellant was charged with serious aggressive offenses against persons, his culpability, his prior juvenile court history, and the number of felony charges were sufficient to deny transfer. [N.B. v. State, 2011 Ark. App. 43.](#)

Trial court upheld in denying transfer based upon the appellant's age, his prior history of sexual assault, and the fact that he was charged with a violent offense against a person. [R.F.R. v. State, 2009 Ark. App. 583.](#)

Transfer was denied where juvenile was seventeen years old at time of alleged offense and charged with capital murder and aggravated robbery. Although juvenile did not have a significant juvenile record and the court found that there were rehabilitation programs available, the court did not err in denying the transfer. [Lofton v. State, 2009 Ark. 341.](#)

The issue before the trial court was whether the appellant was forced or manipulated into participating in the robbery or whether he was a willing participant. The trial court found that the evidence, including events shown on the videotape, contradicted appellant's testimony and that he was a willing participant. The trial court found that his testimony was not credible. [R.M.W. v. State, 375 Ark. 1, 289 \(2008\).](#)

The trial court must consider all ten factors at Arkansas Code Annotated section 9-27-318(g). The circuit court's failure to specifically mention certain evidence presented by the defendant does not mean that the court ignored it or failed to consider the evidence. [Beulah v. State, 344 Ark. 528 \(2001\).](#)

Appellant argued that the circuit court considered improper evidence, including hearsay and a confession that was not voluntarily, knowingly, and intelligently given. The court found that even if the hearsay statements should not have been admitted, appellant was not prejudiced because there was sufficient testimony to establish the serious and violent nature of the

crimes. The court also held that it was not an error for the court to consider the allegedly involuntary confession at the transfer hearing. Transfer hearings are held for the purpose of determining jurisdiction and the statute does not suggest that the trial court should consider motions to suppress at these hearings. [Witherspoon v. State, 74 Ark. App. 151, \(2001\).](#)

It was not necessary for the findings of fact to explicitly detail rulings on the ten statutory factors because the record supported that the trial court considered the statutory factors. In considering [Arkansas Code Annotated section 9-27-318] subsection (g)(5) regarding the previous history of the juvenile, the court was correct in considering the juvenile's entire background. [Jongewaard v. State, 71 Ark. App. 269 \(2000\).](#)

Appellant was sixteen at the time he was charged in circuit court with residential burglary, rape and first degree terroristic threatening. He appealed the circuit court's denial of his motion to transfer his case to juvenile court. He argued that the court failed to offer any evidence regarding the seriousness of the charged offenses and the court failed to make written findings to support its decision. The Arkansas Court of Appeals held that the trial court was not clearly erroneous where there was evidence in the record of a repetitive pattern of offenses, the past rehabilitative efforts had proved unsuccessful, and the pattern of offenses had become increasingly more serious. [Box v. State, 71 Ark. App. 403 \(2000\).](#)

The trial court has a duty to review the filing in adult court based upon the criteria set out in Juvenile Code. [Banks v. State, 306 Ark. 273 \(1991\); Pennington v. State, 305 Ark. 312 \(1991\).](#)

Transfer Hearing Constitutional Challenges

Appellant, charged with capital murder, challenged the constitutionality of the juvenile transfer statute. Appellant argued the statute was a violation of separation of powers by vesting power to the prosecutor charging discretion that ultimately determined initial jurisdiction over a certain class of juveniles. The Supreme Court found that the transfer statute was not a rule of pleading, practice, and procedure, but rather substantive law rooted in public policy. Appellant next argued that the statute violated article 2, section 12 of the Arkansas Constitution because it allows the prosecutor to set aside the statutory protections afforded juveniles. Yet, this section of the Constitution provides that the General Assembly has the power to suspend or set aside the laws of the state.

Appellant argued that the statute denied him equal protection. The equal-protection clause permits classification with a rational basis that is reasonably

related to a legitimate government purpose. Appellant failed to show how the statute was arbitrary or irrational. Appellant also lacks standing to challenge the transfer statute on the basis of cruel and unusual punishment because it allows for adult sentencing. The circuit court considered and made written findings of all the statutory factors. There was clear and convincing evidence to support the circuit court's order denying appellant's transfer. [C.B. v State, 2012 Ark. 220](#).

There was clear and convincing evidence to support the trial court's finding that the appellant, who was fourteen at the time of the alleged offense and charged with capital murder, should be charged as an adult. Appellant lacked standing to challenge the constitutionality of the sentencing authorized by Arkansas Code Annotated section 9-27-318, because there had been no finding of guilt and appellant had not been sentenced.

Appellant argued that his Fifth Amendment right was violated because he was forced to incriminate himself at the transfer hearing. However, there is nothing in the statute that requires the defendant to testify, and in fact the defendant did not testify at the hearing. Moreover, appellant did not argue that he declined to provide testimony that might have persuaded the trial court to transfer his case to the juvenile division because of his fear of self-incrimination.

Finally, appellant argued an equal protection violation based on the alleged impermissible classification between juveniles charged as adults and juveniles in the transfer statute. The equal protection clause permits classifications that have a rational basis and that are reasonably related to a legitimate governmental purpose. Appellant failed to demonstrate that the transfer statute is arbitrary or irrational. [Otis v. State, 355 Ark. 590 \(2004\)](#).

Court Findings

The court shall make written findings on all the factors set forth in subsection (g). [Ark. Code Ann. § 9-27-318\(h\)\(1\)](#). See (1) – (10) above.

Appellant failed to preserve his argument on appeal that the trial court erred in failing to make written findings of each of the statutory factors outlined in Arkansas Code Annotated section 9-7-318(g). [J.A.C. v. State, 2013 Ark. App. 496](#), [J.A.C. v. State \(2\), 2013 Ark. App. 513](#).

The circuit court is required to review the factors at Arkansas Code Annotated section 9-27-318 for transfer motions. [R.M.W. v. State, 375 Ark. 1, 289 S.W. 3d 46 \(2008\)](#).

Upon a finding by clear and convincing evidence that juvenile should be transferred to another division of circuit court, the court shall enter an order to that effect. [Ark. Code Ann. § 9-27-318\(h\)\(2\)](#).

Note: Cases holding that, under law prior to 2003, the juvenile should be tried as an adult are as follows: [Jones v. State, 332 Ark. 617, 967 S.W.2d 559 \(1998\)](#); [Rhodes v. State, 332 Ark. 516, 967 S.W.2d 550 \(1998\)](#); [Wright v. State, 331 Ark. 173, 959 S.W.2d 50 \(1998\)](#).

Upon a finding by the criminal division of circuit court that a juvenile ages fourteen (14) through seventeen (17) and charged with a crime in Arkansas Code Annotated section 9-27-318(c)(2) should be transferred to the juvenile division of circuit court, the criminal division of circuit court may transfer the case as an extended juvenile jurisdiction case. [Ark. Code Ann. § 9-27-318\(i\)](#).

Since the court denied the transfer, extended juvenile jurisdiction was not available. [Lofton v. State, 2009 Ark. 341](#).

If a juvenile age fourteen (14) or fifteen (15) is found guilty in the criminal division of circuit court for an offense other than those listed in Arkansas Code Annotated section 9-27-318(b) or (c)(2), the judge shall enter a juvenile delinquency disposition, pursuant to Arkansas Code Annotated section 9-27-330. [Ark. Code Ann. § 9-27-318\(j\)](#).

Bail or Bond

Upon transfer to another division of circuit court, any bail or appearance bond shall continue in effect in the division to which the case is transferred. [Ark. Code Ann. § 9-27-318\(k\)](#).

Appeal

Any party may appeal an order granting or denying transfer. [Ark. Code Ann. § 9-27-318\(l\)](#).

The Supreme Court found that Arkansas Rule of Appellate Procedure - Criminal 3 was incompatible with Arkansas Code Annotated section 9-27-313(l), that provides that any party can appeal a transfer order. Rule 3 governs and since this is not one of the types of interlocutory appeals permitted by the rule the court dismissed the State's appeal. [State v. A.G., 2011 Ark. 244](#).

Appellant argued that the circuit court abused its discretion in allowing two witnesses to testify at the transfer hearing that were not disclosed in discovery and other issues that were not addressed on appeal. The Supreme Court noted that "the State blatantly violated Rule 17.1 [of the Arkansas Rules of Criminal Procedure] by refusing to offer the witnesses' names to the defense until late afternoon before the hearing." The State also violated the circuit court's discovery order, which had been extended. The court found that the violation of the rule and trial court's order

offended the notion of fair play, was highly prejudicial, and was not harmless error. [N.D. v. State, 2011 Ark. 282.](#)

Transfer appeals must be by interlocutory appeal and appeals after conviction are untimely and will not be considered. [Ventry v. State, 2009 Ark. 300.](#)

The court adopted a prospective rule that an appeal from an order concerning a juvenile transfer from one court to another court with jurisdiction must be considered by way of an interlocutory appeal. A juvenile cannot challenge transfer orders from juvenile to circuit court on direct appeal from a judgment or conviction of the circuit court. [Hamilton v. State, 320 Ark. 346 \(1995\).](#)

Appeal did not satisfy Rule 36.10, which requires prejudicial error. [State v. Gray, 319 Ark. 356 \(1995\).](#)

The first case in which the U.S. Supreme Court addressed the rights of a juvenile accused of a crime was a waiver case. The Court held that a condition to a valid waiver from juvenile court to adult court is that a juvenile is entitled to a hearing and right to counsel at hearing. A waiver hearing must measure up to essentials of Due Process and fair treatment.

Kent involved construction of the Juvenile Court Act of the District of Columbia. The Supreme Court attached a policy memorandum dated November 30, 1959 to its opinion in *Kent*. The memorandum had been prepared by the Judge of the Juvenile Court of the District of Columbia in consultation with the Chief Judge and other D.C. judges, the U.S. Attorney, and other concerned groups.

It set out the following factors for a judge to consider in deciding whether to waive juvenile court jurisdiction and to transfer to adult court:

- The seriousness of the alleged offense to the community and whether the protection of community requires a waiver;
- Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- Whether the alleged offense was against persons or property - greater weight if against persons, especially if person was injured;
- Prospective merit of complaint - is there likely to be an indictment by grand jury;
- Desirability of trial and disposition if others involved are adults who will be charged in adult court;
- Sophistication and maturity of juvenile, including home environment, mental situation, emotional attitude and pattern of living;

- Previous record and history of juvenile;
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation for the juvenile.

[Kent v. United States, 383 U.S. 541 \(1966\).](#)

Adjudication

Purpose

To determine whether the allegations in a petition are substantiated by the proof. [Ark. Code Ann. § 9-27-303\(4\); Ark. Code Ann. § 9-27-327\(a\)\(1\).](#)

Time Constraints

If a juvenile is in detention, the adjudication hearing shall be held no later than fourteen (14) days from the date of the detention hearing unless waived by juvenile or good cause is shown for a continuance. [Ark. Code Ann. § 9-27-327\(b\).](#)

Arkansas Court of Appeals found that failure to conduct adjudication hearing within fourteen (14) days of detention hearing did not result in loss of court's jurisdiction. [Robinson v. State, 41 Ark. App. 20, 847 S.W.2d 49 \(1993\).](#)

Rules

Unless otherwise indicated, the Arkansas Rules of Evidence apply. [Ark. Code Ann. § 9-27-325\(e\)\(1\).](#)

Appellant was adjudicated delinquent for rape and argued that the court erred in admitting evidence under Ark. R. Evid. 803(25) of a video of an interview of a child victim at a Child Advocacy Center. Appellant argued that the court erred in finding the videotaped statements reliable. Appellant's argument was not preserved for appeal because appellant only objected on the basis that she had not cross-examined the child. The appellate court further noted that it found no abuse of discretion in admitting the videotape. [B.R. v. State, 2012 Ark. App. 644.](#)

The state argued that the court erred in holding that a minor victim and her mother can waive the physician-patient privilege in 503(d)(3)(A) because they are not parties to the criminal prosecution. The state, not the victim is the party and the victim does not have a claim to the criminal prosecution for purposes of the exception to the physician-patient privilege rule. [State v. K.B., 2010 Ark. 228.](#)

Delinquency adjudication affirmed based on check forgery. Appellant argued that the trial court erred in allowing hearsay testimony about her

identification in reference to a picture in a yearbook. Hearsay is not violated when a witness testifies about a physical object which was not presented in court. Further, the statements were not offered for the truth of the matter asserted but to explain the employee's conduct. [Taylor v. State, 88 Ark. App. 269 \(2004\).](#)

The Arkansas Rules of Civil Procedure shall apply to all proceedings, except as otherwise provided. [Ark. Code Ann. § 9-27-325\(f\).](#)

The Rules of Criminal Procedure shall apply to delinquency proceedings. [Ark. Code Ann. § 9-27-325\(f\).](#)

Appellant failed to comply with Arkansas Rule of Criminal Procedure 33.1 to make specific motions regarding the lack of evidence to prove serious physical injury and the lack of evidence to prove culpable mental state. [L.C. v. State, 2012 Ark. App. 666.](#)

The Arkansas Rules of Criminal Procedure apply to delinquency proceeding and pursuant to Rule 33.1, failure to challenge the sufficiency of the evidence in a bench trial by a motion to dismiss waives a sufficiency appeal. [S.M.C. v. State, 2012 Ark. App. 521.](#)

Appellant argued there was insufficient evidence to support his delinquency adjudication based on harassing communications and disorderly conduct. Ark. R. Crim. P. 33.1(b) applies to juvenile delinquency proceedings and appellant failed to renew his motion to dismiss at the close of all the evidence and he failed to state the specific grounds. [I.P. v. State, 2012 Ark. App. 273.](#)

Appellant was adjudicated delinquent on second-degree battery. Failure to specify the grounds for dismissal failed to preserve the sufficiency of the evidence argument of appeal pursuant to Ark. R. Crim. P. 33.1(b). [M.W. v. State, 2010 Ark App. 799.](#)

Appellant failed to make a motion to dismiss at the close of the evidence as required by Rule 33.1. A motion for dismissal must specify the element of the crime that the state failed to prove. [D.B. v. State 2010 Ark. App. 433.](#)

Motions made at the close of the state's and defense's evidence were not specific enough to advise the court as to the exact element of the crime that the state failed to prove and did not preserve the argument for appeal. A brief filed in support of a motion to dismiss in a bench trial that is made after a case is taken under advisement is untimely and does not cure a defective motion under Rule 33.1. [T.C. v. State, 2010 Ark. 240.](#)

The Arkansas Rules of Criminal Procedure apply to delinquency proceedings and failure to renew the directed verdict motion at the close of all the evidence waived any sufficiency challenge on appeal. [Jones v. State, 347 Ark. 409 \(2002\)](#); [A.D.S. v State, 98 Ark. App., 122 \(2007\)](#).

Pursuant to Rule 33.1(b) of the Arkansas Rules of Criminal Procedure, failure to make a timely motion for dismissal at the close of the evidence waives any right to challenge the sufficiency of the evidence. If properly preserved for review, there was sufficient evidence to find the juvenile delinquent for possession of a controlled substance with intent to deliver where the juvenile was in close proximity and accessible to the methamphetamine, he was driving and he told the officers, “the stuff was not his” indicating guilty knowledge of its presence. [J.R. v. State, 73 Ark. App. 194, \(2001\)](#).

The juvenile defendant may not appeal from a plea of guilty or nolo contendere, except as provided by Arkansas Rule of Criminal Procedure 24.3(b), which provides that a defendant may enter a guilty plea conditioned on the reversal of a pretrial determination of a motion to suppress illegally obtained evidence. These guilty pleas do not fall within the rule. Rule 36.1 precluded the court from hearing the appeal. [Mason v. State, 323 Ark. 361 \(1996\)](#).

Burden of Proof

Beyond a reasonable doubt in delinquency hearings. [Ark. Code Ann. § 9-27-325\(h\)\(2\)\(A\)](#).

The U.S. Supreme Court held that Due Process explicitly protects against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which the defendant is charged. This burden extends to children as well as adults. [In Re Winship, 397 U.S. 358 \(1970\)](#).

Confessions - Court Finding

In determining whether a juvenile’s confession was voluntarily, knowingly, and intelligently made, the court shall consider all circumstances surrounding the confession, including without limitation as follows:

- (1) The juvenile’s physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the confession;
- (3) In cases in which the custodial parent, guardian, or custodian agreed to the interrogation that led to the confession, whether the custodial parent,

guardian, or custodian understood the consequences of the confession or has an interest in the matter that is adverse to the juvenile;

- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the confession was the result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her custodial parent, guardian, or custodian had waived the right to counsel or been provided counsel; and
- (7) Whether any of the following occurred:
 - (A) The oral, written, or sign language confession was electronically recorded in its entirety;
 - (B) The entire interrogation was electronically recorded;
 - (C) The audio or video recordings of the interrogation, if available, were used; and
 - (D) All of the voices on the recording are identified and the names of all persons present during the interrogation are identified.

Appellant makes several arguments that the trial court erred in denying his motion to suppress his confession. The Court addressed whether appellant's waiver of Miranda rights was voluntary, knowing, and intelligent. When the juvenile asked the police officer what "waiver" meant the officer gave him the definition of voluntariness. As a result, his waiver was not made with "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." The circuit judge's finding that T.C. knowingly and intelligently waived his rights was clearly against the preponderance and the confession is suppressed. [T.C. v. State, 2010 Ark. 240](#).

Trial court affirmed in granting juvenile's motion to suppress his custodial statement for failure to contact the juvenile's parent prior to questioning. [State. v. L.P., 369 Ark. 21 \(2007\)](#).

Fitness to Proceed

In any juvenile delinquency proceeding where the juvenile's fitness to proceed is put in issue by a party or the court, the provisions of Arkansas Code Annotated section 5-2-301 et seq. shall apply. [Ark. Code Ann. § 9-27-325\(j\)](#).

Appellant was not denied a fair and full defense to meaningfully challenge the state's mental evaluation where he stipulated that he was fit to proceed and was given the opportunity to present his own expert witnesses as to why his Asperger's diagnosis affected his mental capacity. [E.S. v. State, 2013 Ark. App. 378.](#)

A juvenile has a due process right to have his competency determined prior to adjudication. [Golden v. State, 341 Ark. 656 \(2000\).](#)

Appellant argued that the trial court erred by not considering whether the juvenile was competent to stand trial. The issue of competency was not reached because it was not properly raised with the trial court. [K.M. v. State, 335 Ark. 85 \(1998\).](#)

Defenses

In delinquency proceedings, juveniles are entitled to all defenses available to defendants in circuit court. [Ark. Code Ann. § 9-27-325\(k\).](#)

Note: Act 987 of 2001, Section 3, amended Arkansas Code Annotated section 9-27-325(k) to provide that delinquents were entitled to all defenses to address prior case law indicating there was no statutory right for such defenses.

Delinquency Adjudication Subject to Sex & Child Offender Assessment

The court shall order a juvenile to submit to a sex offender screening and risk assessment if the juvenile is found delinquent of the following offenses:

- (1) Rape;
- (2) Sexual assault in the first degree;
- (3) Sexual assault in the second degree;
- (4) Incest; or
- (5) Engaging children in sexually explicit conduct for use in visual or print medium, pursuant to Ark. Code Ann. § 5-27-303. [Ark. Code Ann. § 9-27-356\(a\).](#)

The court may order a Sex Offender Screening and Risk Assessment if a juvenile is adjudicated delinquent for any offense with an underlying sexually motivated component. [Ark. Code Ann. § 9-27-356\(b\)\(1\).](#)

The court may order reassessment of the Sex Offender Screening and Risk Assessment at any time during the court's jurisdiction over the juvenile. [Ark. Code Ann. § 9-27-356\(c\).](#)

Court Ordered Safety Plans Mandated to Schools

When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to student safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan be provided to the superintendent and principal where the juvenile is enrolled. Ark. Code Ann. § 9-27-309(m)(1).

Safety Plan means a plan ordered by the court to be developed for an adjudicated delinquent sex offender, pursuant to Arkansas Code Annotated section 9-27-356, and who is at moderate or high risk of reoffending. Ark. Code Ann. § 9-27-303(51).

When a court order amends or removes any safety plan, the court shall direct that a copy of the safety plan and copy of the order be provided to the school superintendent and the principal where the juvenile is enrolled. Ark. Code Ann. § 9-27-309(m)(2).

Delinquency Adjudications Subject to DNA Samples

A juvenile adjudicated delinquent shall have a deoxyribonucleic acid (DNA) sample drawn for the following offenses:

- (1) Rape;
- (2) Sexual assault in the first degree;
- (3) Sexual assault in the second degree;
- (4) Incest;
- (5) Capital murder;
- (6) Murder in the first degree;
- (7) Murder in the second degree;
- (8) Kidnapping;
- (9) Aggravated robbery; and
- (10) Terroristic act. Ark. Code Ann. § 9-27-357(a).

The court shall order a \$250 fine, unless the court finds that the fine would cause undue hardship. Ark. Code Ann. § 9-27-357(b).

The DNA sample shall be drawn either:

- (1) upon intake at a juvenile detention facility;

- (2) upon intake at a DYS facility; or
- (3) if the juvenile is not placed in a facility, the probation officer shall ensure that the DNA sample is drawn. Ark. Code Ann. § 9-27-357(c).

All DNA samples shall be taken in accordance with the regulations promulgated by the State Crime Laboratory. Ark. Code Ann. § 9-27-357(d).

Studies & Reports

Court may order any studies, evaluations, or predisposition reports, if needed, that bear on the disposition, following adjudication. Ark. Code Ann. § 9-27-327(d).

Reports shall be written and provided to all parties at least two (2) days prior to disposition hearing. Ark. Code Ann. § 9-27-327(e)(1).

All parties shall be given a fair opportunity to controvert any part of reports. Ark. Code Ann. § 9-27-327(e)(2).

Delinquency Cases

Brady Violations

Appellant failed to show that the evidence was suppressed. The state provided the defense the witness and the statement in question, T.C.'s counsel failed to interview the witness or subpoena him. Appellant also failed to show that the evidence was exculpatory or material. Appellant failed to show a Brady violation occurred. T.C. v. State, 2010 Ark. 240.

Closing Argument

Delinquency adjudication reversed because defendant was denied an opportunity to make a closing argument. A juvenile defendant in a jury or bench trial has a fundamental right to make a closing argument under the Fourteenth Amendment. S.S. v. State, 361 Ark. 42 (2005).

Rape Shield

Rape Shield statute did not violate separation of power's doctrine and did not apply to juvenile delinquency proceedings. Potential prejudice to victim, who was under 14, outweighed any relevance of evidence in a delinquency proceeding as to whether or not the victim engaged in sexual intercourse or deviate sexual activity with a person less than fourteen (14) years old. Failure of trial court to conduct risk assessment was moot because juvenile was not prejudiced. M.M. v. State, 350 Ark. 328 (2002).

First Amendment – Threat

The Arkansas Supreme Court found that the juvenile’s rap lyrics constituted a true threat and was not protected by the First Amendment. The court adopted an objective test on how a reasonable person would have taken the statement and used the following Dinwiddie factors adopted by the Eighth Circuit to determine if the “true threat” exception was applicable:

- the reaction of the recipient of the threat and other listeners;*
- whether the threat was conditional;*
- whether the maker of the threat had made similar statements to the victim in the past;*
- whether the threat was communicated directly to its victim; and*
- whether the victim had reason to believe that the maker of the threat had a propensity to engage in violence.*

This list is not exhaustive, and the presence or absence of any one of its elements need not be dispositive. [United States v. Dinwiddie, 76 F.3d 913 \(8th Cir. 1996\)](#). [Jones v. State, 347 Ark. 409 \(2002\)](#).

The Court reversed a delinquency adjudication finding that Arkansas Code Annotated section 6-17-106, which makes it a misdemeanor for a person to abuse or insult a public school teacher who is performing normal and regular or assigned school responsibilities, is an unconstitutional infringement on the First Amendment and the Due Process Clause of the Fourteenth Amendment. [Shoemaker v. State, 343 Ark. 727 \(2001\)](#).

Note: In response to this case the legislature amended Arkansas Code Annotated section 6-17-106 to provide that it is unlawful, during regular school hours and in a place where a public school employee is required to be, for any person to address a school employee using language that is calculated to:

- cause a breach of peace;*
- materially and substantially interfere with the operation of the school; or*
- arouse the person to whom it is addressed to anger, to the extent likely to cause imminent retaliation. [ACT 1565 of 2001](#).*

Accomplice

Delinquency adjudication upheld. The Arkansas Court of Appeals found sufficient evidence to support a finding that the juvenile was an accomplice to felony criminal mischief charges. An accomplice is one who directly participates in the commission of the offense or who, with the purpose of promoting or facilitating the commission of the offense, aids, agrees to aid or attempts to aid the other person in committing the offense. An accomplice is criminally liable for the conduct of others. The relevant factors in determining the connection of an accomplice to a

crime are the presence of the accused in the proximity of the crime, the opportunity to commit the crime and the association with a person involved in the crime in a manner suggestive of joint participation. [Pack v. State, 73 Ark. App. 123 \(2001\)](#).

Delinquency adjudication was upheld based on the testimony from the appellant's accomplices because the accomplice-corroboration rule at Arkansas Code Annotated section 16-89-111(e)(1) does not apply to juvenile proceedings. [Swanner v. State, 73 Ark. App. 4 \(2001\)](#); [Munhall v. State, 337 Ark. 41 \(1999\)](#).

Note: Act 903 of 2001 amended Arkansas Code Annotated section 16-89-111(e)(1) to add that an adjudication of delinquency for a felony cannot be based on the testimony of an accomplice unless corroborated by other evidence tending to connect the juvenile to the commission of the offense.

Victim Evidence

Appellant was adjudicated delinquent on three counts of sexual assault in the second degree. He argued that the court erred in denying his motion for directed verdict which is considered a challenge to the sufficiency of evidence. Appellant argued that the victims' testimony was not credible. He also argued it was inherently improbable and/or physically impossible and that there was not additional evidence support the three victims' testimony. The appellate court disagreed that none of the victims' versions of events were improbable or physically impossible. The trial court found that the victims told appellant no and he would not take no for an answer. The trial court found the victims' testimony credible and the uncorroborated testimony of a victim of a sexual offense constitutes sufficient evidence. [D.D. v. State, 2012 Ark. App. 637](#).

Note: Act 1809 of 2003 amended Arkansas Code Annotated section 9-27-329(f) to allow victim impact statements at disposition hearings. The trial court erred in allowing victim impact evidence because it is applicable to criminal, not juvenile proceedings. However, the appellant failed to show how he was prejudiced by the victim impact testimony. [Hunter v. State, 341 Ark. 665 \(2000\)](#).

Sufficiency of the Evidence

Appellant's argument that there was not substantial evidence to support his adjudication of obstruction of governmental operations failed. There was evidence of his disorderly conduct at a juvenile detention facility where he refused to return to his room and a struggle ensued which resulted in the assault of officers while appellant tried to resist their control. [R.B. v. State, 2013 Ark. App. 377](#).

Appellant challenged that there was sufficient evidence that she was an accomplice to the crime of disorderly conduct. Appellant argued that there was no evidence that she engaged in any behavior that would make her an accomplice,

but she was just present at the crime scene. The trial court affirmed where it found that appellant was an encouragement to one of the girls in the altercation and there was conflicting testimony about whether appellant actually sprayed mace. [E.S. v. State, 2013 Ark. App. 378.](#)

Appellant argued that there was insufficient evidence that he committed aggravated assault and terroristic threatening when he pointed a gun at a schoolmate, because his actions did not create a substantial danger of death or injury. The victim testified that he pointed the gun at him and cocked the hammer and said he would shot him if he walked closer. Another witness driving by stopped and called 911. Even appellant testified that he pointed a gun and that it was not a toy gun. The court could reasonably conclude that the loaded gun found inside appellant's house was the gun he used. [E.N. v. State, 2013 Ark. App. 365.](#)

Appellant argued that there was not substantial evidence to support his adjudication of theft of property that he pumped gas and left without paying. The identification in conjunction with other testimony supported the adjudication finding, where the eyewitness provided a physical description of the juvenile and identified the vehicle and license plate number. Appellant testified that he had driven earlier that day and was at the residence listed on the vehicle registration. [K.A.S. v. State, 2013 Ark. App. 236.](#)

The only sufficiency argument preserved for appeal was that there was no proof that appellant caused injury on anybody and on that point the court disagreed based on the theory of accomplice liability. [L.C. v. State, 2012 Ark. App. 666.](#)

Appellant argued there was insufficient evidence to find him an accomplice to misdemeanor theft of property. The appellate court noted that the appellant did not argue that the court erred in finding he had a legal duty to prevent or report the theft. As a result, the court only addressed the issue of whether there was substantial evidence to support the finding that appellant assisted in the theft. A surveillance video showed the appellant with another juvenile, who admitted that he had cell phone that was stolen. Appellant's proximity to the crime and his action in looking down the hall prior to entering the locker room where the cell phone was stolen was evidence suggestive of joint participation. [T.D. v. State, 2012 Ark. App. 140.](#)

Delinquency adjudication affirmed on one count of second-degree domestic battery. Appellant argued that state failed to prove that he was not justified in committing the act. Whether justification exists is a question for the trier of fact to resolve. The circuit court's decision is supported by substantial evidence and the court could have concluded that appellant was not justified in using deadly force, or that appellant could not have reasonably believed that his father was about to

use deadly force or commit a felony against him, or that the amount of force appellant used was not necessary. [D.W. v. State, 2011 Ark. App. 187.](#)

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Appellant was charged with criminal mischief and theft of property. Appellant argued that there was insufficient evidence of the witness's identification. Yet, the witness testified that she saw appellant run from her car and identified appellant. [A.F. v. State, 2010 Ark. App. 523.](#)

Appellant challenged the sufficiency of the evidence in a delinquency finding that he committed rape of his 11 year old cousin. A rape victim's testimony need not be corroborated, nor is scientific evidence required. [D.B. v. State 2010 Ark. App. 433.](#)

Appellant appealed finding that he committed aggravated assault. The evidence did not support a conclusion that a substantial risk of death was created by appellant's use of his car. [P.G. v. State, 2010 Ark. App. 404.](#)

The trial court found that the juvenile committed the offense of carrying a weapon. Appellant was arrested, while driving a friend's car, for an outstanding warrant for failure to appear. Appellant asked the officer to retrieve his cell phone from the car. The officer found a knife between the passenger seat and console. Appellant constructively possessed the knife. It was found within easy reach and close to his personal property, the cell phone. The state is required to also prove that appellant possessed the weapon with the purpose to employ it against a person. While trial counsel made some argument with this regard it is absent on appeal. As a result, this case should not be used in future cases on this point. [M.S. v. State, 2010 Ark. App. 254.](#)

The trial court found that the juvenile committed the offense of misdemeanor theft by receiving. Appellant's reliance on corroborating evidence not being supported by an accomplice is misplaced because the charge is a misdemeanor not a felony as provided in Ark. Code Ann, 16-18-11(e)(1). [R.W. v. State, 2010 Ark. App. 220.](#)

Reversed and remanded delinquency adjudication for harassment holding that the juvenile's statement was not likely to invoke violence or a disorderly response. The trial court's reliance on what wasn't said was not sufficient. Unspoken words

do not constitute harassment because silence is not likely to provoke a violent or disorderly response. [Hunt v. State, 92 Ark. App. 342 \(2005\).](#)

Delinquency adjudication reversed where appellant was charged and found delinquent for terroristic threatening in the first degree for having a “Hit List (To Shoot List)” naming fellow students in a notebook at school that a teacher discovered. The Court relied on Knight v. State, 25 Ark. App. 353 (1988), that the gravamen of the offense is communication. Evidence of the list was insufficient to find that the appellant had the purpose of terrorizing another. [Roberts v. State, 78 Ark. App. 103 \(2002\).](#)

The evidence was sufficient to support appellant’s delinquency adjudication for capital murder and attempted capital murder based on the appellant’s confession and an arson investigator’s testimony that the fire was started with an accelerant and was not an accident. [Matthews v. State, 67 Ark. App. 35 \(1999\).](#)

Delinquency adjudication upheld where the court of appeals found sufficient evidence to support a finding that the juvenile was an accomplice to felony criminal mischief charges. An accomplice is one who directly participates in the commission of the offense or who, with the purpose of promoting or facilitating the commission of the offense, aids, agrees to aid or attempts to aid the other person in committing the offense. An accomplice is criminally liable for the conduct of others. The relevant factors in determining the connection of an accomplice to a crime are the presence of the accused in the proximity of the crime, the opportunity to commit the crime and the association with a person involved in the crime in a manner suggestive of joint participation. [Pack v. State, 73 Ark. App. 123 \(2001\).](#)

Appellant argued that the trial court did not consider evidence of the juvenile’s mental state to negate the required intent to commit the crime of second-degree battery. The only intent required is the intent to cause physical injury. The State presented substantial evidence to support the trial court’s finding that the appellant had the requisite intent to commit the crime. [K.M. v. State, 335 Ark. 85 \(1998\).](#)

Appellant was charged with a violation of Arkansas Code Annotated section 5-73-121 for having a knife three-and-a-half inches long with the purpose to employ the weapon against a person. The statute provides that if a person carries a knife with a blade three-and-a-half inches long or longer, this fact shall be prima facie proof that the knife carried is a weapon. Appellant argued that the juvenile court erred in not requiring proof of intent to possess the knife as a weapon and that the statute impermissibly shifts the burden of proof to him, violating his due process rights.

The threshold inquiry is whether the presumption is mandatory or permissive. As long as the presumption is permissive and there is a rational connection between the fact proved and the fact presumed there is no merit to the appellant's contention that the burden was impermissibly shifted to him. In the light most favorable to the state, the juvenile court did not err in its finding of delinquency. [Garcia v. State, 333 Ark. 26 \(1998\).](#)

Appellant was adjudicated delinquent for criminal mischief in the first degree for wrecking a car. He argued that the trial court erred in denying his motion for directed verdict because there was not sufficient evidence to prove he purposely destroyed or damaged the car. While the evidence was not sufficient to show that appellant willfully intended to wreck and damage the car, the court found that there was enough evidence to find that he acted recklessly. The court modified the basis for the trial court's finding of delinquency to criminal mischief in the second degree and remanded the case to the trial court for assessment of the penalty. [McGill v. State, 60 Ark. App. 246 \(1998\).](#)

Appellant was adjudicated delinquent for second-degree assault. Appellant argued that there was insufficient evidence to support the trial court's determination that he committed second-degree assault. A person commits second-degree assault if he recklessly engages in conduct which creates a substantial risk of physical injury to another person. The fact that the juvenile's actions created a substantial risk that the teacher's aide could have fallen and injured herself is sufficient to sustain the trial court's findings. [Walker v. State, 330 Ark. 652 \(1997\).](#)

The appellant was adjudicated delinquent for possession of marijuana. The evidence included an assistant principal's testimony that a drug-sniffing dog stopped at the juvenile's locker and that a bag containing a "green leafy substance" was found along with a pipe. There was also testimony that the juvenile admitted that the substance was his. A stipulated exhibit, prepared by a chemist, was also introduced that provided that the presence or absence of THC could not be confirmed by the test, although visual inspection and the chemical test yielded results consistent with the presence of marijuana. The juvenile moved to dismiss on the basis that the statutory definition of marijuana requires the state to prove the presence of THC and that it failed to do so. The court held that there was substantial evidence to support the juvenile's adjudication. Lay testimony may provide substantial evidence of the identity of a controlled substance, even in the absence of expert chemical analysis. [Springston v. State, 327 Ark. 90 \(1997\).](#)

The Arkansas Supreme Court affirmed the trial court's order adjudicating a juvenile as delinquent for committing the crime of rape. Appellant argued that the trial court erred in denying his directed verdict motions. A motion for a

directed verdict is a challenge to the sufficiency of the evidence. In reviewing the sufficiency of the evidence on appeal, the court will view the evidence in the light most favorable to the State and affirm if the verdict is supported by substantial evidence. Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resort to speculation or conjecture. Further, appellant, who was two years, four months and one day older than the victim on the date of the offense, could not avail himself to the affirmative defense set forth in Arkansas Code Annotated section 5-14-103(a)(3) because he was more than two years older than the victim. [W.D. v. State, 55 Ark. App. 88 \(1996\)](#).

Appellant was convicted of being a minor in possession of a handgun on school property. The court reversed the trial court finding that the evidence failed to link the appellant to constructive possession of the handgun. Constructive possession can be implied where the contraband was found in a place immediately and exclusively accessible to the accused and subject to his control. It may be established by circumstantial evidence, but when such evidence is relied on for conviction, it must indicate guilt and exclude every other reasonable hypothesis. [Knight v. State, 51 Ark. App. 60 \(1995\)](#).

Although two juveniles brought a handgun to school which could not be fired because parts were missing, the juvenile judge correctly found that Arkansas Code Annotated section 5-73-119(a)(1)(A) and (a)(2)(A) refer to the type of ammunition which can be fired from the gun, and not whether the gun itself was capable of being fired.

Penal statutes must be strictly construed in favor of the defendant, but that does not override the consideration statutory construction ascertain the intent of the legislature to insure the safety in public schools. The gun in question was designed to fire rimfire and center-fire ammunition. The fact that it could not be fired when confiscated is irrelevant, and to hold otherwise would thwart legislative intent. [S.T. v. State, 318 Ark. 499 \(1994\)](#).

Appellant was charged with theft of property and appealed his delinquency adjudication. Convictions will be affirmed if supported by substantial evidence. Substantial evidence is that which is of sufficient force and character to compel a conclusion one way or the other without resorting to speculation or conjecture. The court upheld the delinquency adjudication; however, three judges dissented finding that they could not conclude from the evidence that the appellant committed theft of property. [C. H. v. State, 51 Ark. App. 153 \(1995\)](#).

Appellant was charged with theft by receiving, battery in the first degree, and carrying a weapon. Appellant appealed the weapons charge and argued that the state's evidence was insufficient. Circumstantial evidence is sufficient to support

a hypothesis consistent with innocence as determined by the trier of fact. Viewing the evidence in the state's favor, the record reflected that the appellant possessed a knife bearing a double-edge with a five-inch blade concealed under his shirt. Based on the evidence, the juvenile court was affirmed. [Nesdahl v. State, 319 Ark. 277 \(1995\)](#).

Appealable Order

Appellant argued that the trial court erred in denying her motion to dismiss based on deficiencies in the delinquency petition. The proper time to object to an indictment or information is prior to trial. Appellant is barred from raising this on appeal because she failed to properly object prior to trial. [L.C. v. State, 2012 Ark. App. 666](#).

A court does not have the authority to nolle pros on its own motion. The state appealed the trial court for granting a motion to dismiss for violation of speedy trial. The State's right to appeal is limited to Rule 3 of Arkansas Rules of Appellate Procedure – Criminal. The rule requires review for the correct and uniform administration of law, independent of facts. The state's argument on appeal was dismissed because it involved unique facts and circumstances, not the uniform administration of law. [State v. S.L., 2012 Ark. 73](#).

Appellant appealed his adjudication of delinquency for sexual abuse in the first degree and failure to appear. The court found that this order was not appealable because it was not a final order since a subsequent disposition hearing was scheduled. [Daniel v. State, 64 Ark. App. 98 \(1998\)](#).

Delinquency Dispositions

Purpose

To determine what action will be taken following an adjudication and to enter orders consistent with the disposition alternatives. [Ark. Code Ann. § 9-27-329\(a\)](#).

The court shall give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public. [Ark. Code Ann. § 9-27-329\(d\)](#).

Time Constraints

If juvenile is in detention following the adjudication hearing, the disposition hearing shall be held no more than fourteen (14) days following the adjudication hearing. [Ark. Code Ann. § 9-27-329\(b\)](#).

Note: Most disposition hearings immediately follow the adjudication hearing.

Evidence

Unless otherwise indicated, the Arkansas Rules of Evidence apply. Ark. Code Ann. § 9-27-325(e).

The court may enter into evidence any victim impact statements, studies, or reports which have been ordered, even though they are not admissible at the adjudication hearing. Ark. Code Ann. § 9-27-329(f).

Delinquency Disposition Alternatives

After juvenile is adjudicated delinquent, the court may make any of the following dispositions, based on the best interest of the juvenile: Ark. Code Ann. § 9-27-330(a).

Transfer Legal Custody

The court may transfer legal custody of the juvenile to any licensed agency responsible for care of delinquent juveniles, to relatives, or to other individuals. Ark. Code Ann. § 9-27-330(a)(1)(A).

- (1) Prior to the court placing a juvenile in a residential placement, the court shall comply with the mental-health assessments required by Arkansas Code Annotated section 9-27-602 and Arkansas Code Annotated section 9-27-603.
- (2) Custody may only be transferred to a relative or other individual only after a home study of the placement is conducted by DHS or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile. Ark. Code Ann. § 9-27-331(f).
- (3) Transfer of custody shall not include placement of adjudicated delinquents into foster care, except as provided by Arkansas Code Annotated section 12-18-101(a) (72-hour hold provision). Ark. Code Ann. § 9-27-330(a)(1)(C).
- (4) Custody of a juvenile shall not be transferred to DHS (foster care) when a delinquency petition or case has been converted to a FINS petition or case. Ark. Code Ann. § 9-27-331(h).
- (5) If an adjudicated delinquent is also in DHS custody (foster care) pursuant to a FINS or dependency-neglect petition and the court does not commit the juvenile to a facility exclusively for delinquents like DYS, detention, or C-Step, then any issue regarding placement of that juvenile shall be addressed in the original dependency-neglect or FINS case. Ark. Code Ann. § 9-27-331(g)(1).

DYS Commitment

The court may commit the juvenile to the Division of Youth Services (DYS), using the risk assessment distributed and administered by the Administrative Office of the Courts. Ark. Code Ann. § 9-27-330(a)(1)(B)(i).

Appellant argued that the court erred in committing her to DYS because there was evidence of alternative dispositions. While this order is moot since the juvenile has already been released from DYS, The appellate court affirmed the circuit court's disposition as appropriate in this case. Appellant also argued that the disposition order was void because the trial court ordered that prior to being released from DYS, DYS was required to provide notice to the trial court in order for a hearing to be scheduled. Appellant argued that this interfered with DYS' sole release authority. The appellate court held that the issue was moot. DHS requested the court to reach the merits of the argument because according to agency data this language occurs in one quarter of the cases. The appellate court declined to do so because DHS admitted it routinely notified the court prior to a juvenile's release and in the current case the juvenile was released and no hearing was held. L.C. v. State, 2012 Ark. App. 666.

There was no error in circuit judge's disposition of commitment to DYS and probation if released prior to the age of 18. T.C. v. State, 2010 Ark. 240.

No court may commit a juvenile found solely in criminal contempt to DYS. Ark. Code Ann. § 9-27-331(i); Ark. Code Ann. § 9-28-208(a)(2).

In the commitment order, the court may recommend that a juvenile be placed in a treatment program or community-based program instead of a youth services center and shall make specific findings in support of such placement in the order. The court shall also specifically request its recommendation for a DYS aftercare plan upon the juvenile's release. Ark. Code Ann. § 9-27-330(a)(1)(B)(iii).

Note: Arkansas Code Annotated section 9-28-209 grants DYS the authority to make placement decisions once a juvenile is committed to DYS.

The order of commitment to DYS shall state that the juvenile was found delinquent and shall state information regarding the underlying facts of the adjudication. Ark. Code Ann. § 9-28-208(a)(1).

Upon entry of a detention order and commitment to DYS, a court shall transmit the following information to the division:

- (1) a copy of the commitment order;

- (2) a copy of the risk assessment instrument;
- (3) records or information pertaining to the juvenile compiled by the juvenile intake or probation officer that shall include:
 - (A) information on the juvenile's background, history, behavioral tendencies, and family status;
 - (B) the reasons for commitment;
 - (C) the name of the school in which the juvenile is currently or was last enrolled;
 - (D) the juvenile's offense history;
 - (E) the juvenile's placement history;
 - (F) a copy of all psychological or psychiatric evaluations or examinations performed on the juvenile admitted into evidence or ordered by the court while under the court's jurisdiction or supervision of court staff;
 - (G) a comprehensive list of all medications taken by the juvenile; and
 - (H) a comprehensive list of all medical treatment currently being provided to the juvenile. Ark. Code Ann. § 9-28-208(b).

Upon receiving an order of commitment with recommendations for placement, DYS shall consider the recommendations of the committing court in placing a juvenile in a youth services center or a community-based alternative. Ark. Code Ann. § 9-27-330(a)(1)(B)(iv); Ark. Code Ann. § 9-28-208(e).

Upon receipt of an order of commitment, the division or its contracted provider or designee shall prepare a written treatment plan that:

- (1) States the treatment plan for the juvenile, including the types of programs and services that will be provided to the juvenile;
- (2) States the anticipated length of the juvenile's commitment;
- (3) States recommendations as to the most appropriate post-commitment placement for the juvenile.

If the juvenile cannot return to the custody of his or her parent, guardian, or custodian because of child maltreatment, which includes the parent, guardian, or custodian refusing to take responsibility for the juvenile, the Division of Youth Services shall immediately contact DHS's Office of Chief

Counsel; and the Office of Chief Counsel shall petition the committing court to determine the issue of custody of the juvenile.

- (4) States any postcommitment community-based services that will be offered to the juvenile and to his or her family by the division or the community-based provider; and
- (5) Outlines an aftercare plan, if recommended, including specific terms and conditions required of the juvenile and the community-based provider.

If the juvenile progresses in treatment and an aftercare plan is no longer recommended or the terms of the aftercare plan need to be amended as a result of treatment changes, any change in the terms of the aftercare plan and conditions shall be provided in writing and shall be explained to the juvenile.

The terms and conditions shall be provided also to the prosecuting attorney, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian by the division or its designee before the juvenile's release from the division. Ark. Code Ann. § 9-27-330(a)(1)(B)(v).

Violations of conditions of aftercare may be reported to the prosecutor who may petition the court for revocation of aftercare. Ark. Code Ann. § 9-27-364(b)(1).

The treatment plan shall be filed with the committing court no later than thirty (30) days from the date of the commitment order or before the juvenile's release, whichever is sooner.

A copy of the written treatment plan shall be provided and shall be explained to the juvenile.

A copy shall be provided to the prosecutor, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian and shall be filed in the court files of any circuit court where a dependency-neglect or FINS case concerning that juvenile is pending. Ark. Code Ann. § 9-27-330(a)(1)(B)(v)(f).

Upon commitment to DYS or detained in a juvenile detention facility, the court shall order the parent or guardian to provide DYS information on the juvenile's private health insurance coverage when available, including a copy of the juvenile's health insurance policy and pharmacy card. Ark. Code Ann. § 9-27-330(a)(14).

The court shall notify DYS in its commitment order of the court's order of probation including the juvenile's compliance with aftercare, if provided in the treatment plan. Ark. Code Ann. § 9-27-339(a)(2).

An order of commitment shall remain in effect for an indeterminate period not exceeding two (2) years, subject to extension by the committing court for additional periods of one (1) year until the juvenile's 21st birthday if the court finds such extension necessary to safeguard the welfare of the juvenile or the public interest. Ark. Code Ann. § 9-27-331(a)(2)-(3); Ark. Code Ann. § 9-28-208(c).

The length of commitment and the final decision to release shall be the exclusive responsibility of DYS, except when the juvenile is an EJJ offender. Ark. Code Ann. § 9-27-331(a)(5).

Order Evaluations

The court may order the juvenile or members of the juvenile's family to submit to physical, psychiatric, or psychological evaluations. Ark. Code Ann. § 9-27-330(a)(2).

Evaluation, counseling, or treatment of family members may be ordered only after the court's finding such necessary for treatment or rehabilitation of the juvenile. Ark. Code Ann. § 9-27-331(d).

Permanent Custody

The court may grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court, and no further services or periodic review are required. Ark. Code Ann. § 9-27-330(a)(3).

Probation

The court may place the juvenile on probation under terms and conditions prescribed by the court. Ark. Code Ann. § 9-27-330(a)(4)(A).

The court shall have the right to require the juvenile to attend high school or make satisfactory progress toward a general education development certificate. Ark. Code Ann. § 9-27-330(a)(4)(B)(i).

The court shall have the right to revoke probation if the juvenile fails to regularly attend school or if satisfactory progress toward a general education development certificate is not being made. Ark. Code Ann. § 9-27-330(a)(4)(B)(ii).

Unless otherwise stated, and excluding Extended Juvenile Jurisdiction (EJJ) offenders, probation orders shall remain in effect for indeterminate period not exceeding two (2) years from date order entered. Ark. Code Ann. § 9-27-331(c)(1).

Prior to expiration of probation, the court may extend the order for an additional year if it finds extension necessary to safeguard welfare of juvenile or the interest of the public. Ark. Code Ann. § 9-27-331(c)(3).

Appellant argued that the court lacked jurisdiction to revoke his suspended sentence where the revocation petition was filed and heard outside the period of suspension. Appellant's reliance on the criminal code is misplaced; the juvenile code governs. Arkansas Code Annotated section 9-27-331(c) provides that an order of probation shall remain in effect for an indeterminate period not to exceed two years. Since the probationary period had not expired the court had the authority to revoke probation upon the filing of a petition. Byrd v. State, 84 Ark. App. 203 (2003).

Conditions of probation shall be given to the juvenile in writing and explained to the juvenile and parent, guardian, or custodian by the probation officer in the initial conference following the disposition hearing. Ark. Code Ann. § 9-27-339(a).

Any violation of a condition of probation may be reported to the prosecutor who may petition the court for revocation of probation. Ark. Code Ann. § 9-27-339(b).

The juvenile shall be released from probation upon expiration of order or upon a finding by the court that the purpose of the order has been achieved. Ark. Code Ann. § 9-27-331(c)(2).

The court shall notify DYS in its commitment order of the court's order of probation including the juvenile's compliance with aftercare, if provided in the treatment plan. Ark. Code Ann. § 9-27-339(a)(2).

Probation Fee

Court may order fees not to exceed \$20.00 per month. Ark. Code Ann. § 9-27-330(a)(5).

Court Cost

Court may assess a court cost of no more than \$35.00 to be paid by the juvenile, his or her parent, both parents, or guardian. Ark. Code Ann. § 9-27-330(a)(6).

Restitution

Court may order restitution, not to exceed \$10,000 per victim, to be paid by the juvenile, a parent, both parents, the guardian, or custodian. Ark. Code Ann. § 9-27-330(a)(7)(A); Ark. Code Ann. § 9-27-331(e)(1).

The prosecutor must prove the following by a preponderance of the evidence that the specific damages were caused by the juvenile and that the juvenile's actions were the proximate cause of the damage. Ark. Code Ann. § 9-27-331(e)(1).

If the amount of restitution exceeds \$10,000 for any individual victim, the court shall enter a restitution order of \$10,000 in favor of the victim. Ark. Code Ann. § 9-27-331(e)(2)(A).

Nothing prevents a person or entity from seeking a recovery for damages in excess of \$10,000 under other law. Ark. Code Ann. § 9-27-331(e)(2)(B).

The trial court ordered appellants to make restitution on destroyed property in an amount exceeding \$2,000.00 pursuant to Acts 61 and 62 of 1994, which raised the limit to \$10,000.00. However, the property was destroyed on April 2, 1994, and the new legislation did not take effect until August 26, 1994. Restitution is a penalty that falls within the Constitutional prohibition of ex post facto laws, and therefore, an increase in the amount of restitution constitutes the increase of a penalty. The scheme of the legislation is punitive because it allows for revocation of probation if restitution is not paid. The statutory limits on restitution apply to each victim. Further, the proof admitted of one victim's damages was hearsay because the only evidence presented was an invoice for repairs. [Eichelberger v. State, 323 Ark. 551 \(1996\).](#)

If the custodian is the State of Arkansas, both liability and the amount that may be assessed shall be determined by the Arkansas State Claims Commission. Ark. Code Ann. § 9-27-330(a)(7)(B).

The court shall consider the amount of restitution as follows:

- (1) If the juvenile is to be responsible for the restitution, by agreement between the juvenile and the victim;
- (2) If the parent or parents are to be responsible for the restitution, by agreement between the parent or parents and the victim;
- (3) If the juvenile and the parent or parents are to be responsible for the restitution, by agreement between the juvenile, his parent or parents, and the victim; or

- (4) At a hearing, the State must prove the restitution amount by a preponderance of the evidence. Ark. Code Ann. § 9-27-330(d)(1)(A).

Restitution shall be made immediately, unless the court determines that the parties should be given a specified time to pay or should be allowed to pay in specified installments. Ark. Code Ann. § 9-27-330(d)(1)(B).

In determining if restitution should be paid and by whom, as well as the method and amount of payment, the court shall take into account:

- (1) The financial resources of the juvenile, his parent, both parents, or the guardian, and the burden such payment will impose with regard to the other obligations of the paying party;
- (2) The ability to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (3) The rehabilitative effect of the payment of restitution and the method of payment; and
- (4) The past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct;
- (5) If the parent is a noncustodial parent, the opportunity the parent has had to correct the delinquent juvenile's conduct; and
- (6) Any other factors the court deems relevant. Ark. Code Ann. § 9-27-330(d)(1)(C).

If the juvenile is placed on probation, any restitution ordered under this section may be a condition of the probation. Ark. Code Ann. § 9-27-330(d)(2).

When an order of restitution is entered, it may be collected by any means authorized for the enforcement of money judgments in civil actions, and it shall constitute a lien on the real and personal property of the persons and entities the order of restitution is directed upon in the same manner and to the same extent as a money judgment in a civil action. Ark. Code Ann. § 9-27-330(e).

The judgment entered by the court may be in favor of the state, the victim, or any other appropriate beneficiary. The judgment may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment. Ark. Code Ann. § 9-27-330(f).

The court shall determine priority among multiple beneficiaries on the basis of the seriousness of the harm each suffered, their other resources, and other equitable factors. Ark. Code Ann. § 9-27-330(g).

If more than one (1) juvenile is adjudicated delinquent of an offense for which there is a judgment under this section, the juveniles are jointly and severally liable for the judgment, unless the court determines otherwise. Ark. Code Ann. § 9-27-330(h).

A judgment under this section does not bar a remedy available in a civil action under other law. Ark. Code Ann. § 9-27-330(i)(1).

A payment under this section must be credited against a money judgment obtained by the beneficiary of the payment in a civil action. Ark. Code Ann. § 9-27-330(i)(2).

A determination under this section and the fact that payment was or was not ordered or made are not admissible in evidence in a civil action and do not affect the merits of the civil action. Ark. Code Ann. § 9-27-330(i)(3).

Fine

The court may order a fine not to exceed \$500 to be paid by the juvenile, parent(s), or the guardian. Ark. Code Ann. § 9-27-330(a)(8).

Community Service

The court may order that the juvenile, his or her parent(s), or guardian(s) to perform court-approved volunteer community service.

Community service, not to exceed 160 hours, designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile. Ark. Code Ann. § 9-27-330(a)(9).

Parent Training

The court may order that the parent(s) or guardian(s) of the juvenile attend a court-approved parental responsibility training program, if available. Ark. Code Ann. § 9-27-330(a)(10)(A).

The court may make reasonable orders requiring proof of completion of such training program within a certain time period and payment of a fee covering the cost of the training program. Ark. Code Ann. § 9-27-330(a)(10)(B).

The court may provide that any violation of such orders shall subject the parent, both parents, or guardian(s) to the contempt sanctions of the court. Ark. Code Ann. § 9-27-330(a)(10)(C).

Detention

The court may order that the juvenile remain in a juvenile detention facility for an indeterminate period not to exceed ninety (90) days. Ark. Code Ann. § 9-27-330(a)(11)(A)(i).

The court may further order that the juvenile be eligible for work release or to attend school or other educational or vocational training. Ark. Code Ann. § 9-27-330(a)(11)(A)(ii).

The juvenile detention facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents. Ark. Code Ann. § 9-27-330(a)(11)(B).

Upon ordering a juvenile to be placed in detention, the court shall order the parent or guardian to provide the detention facility information on the juvenile's private health insurance when available, including a copy of the juvenile's health insurance policy and pharmacy card. Ark. Code Ann. § 9-27-330(a)(14).

Electronic Monitoring - Residential Detention

The court may place the juvenile on residential detention with electronic monitoring, either in the juvenile's home or in another facility as ordered by the court. Ark. Code Ann. § 9-27-330(a)(12).

Cost for Commitment, Detention or Electronic Monitoring

Order the parent(s) or guardian(s) of any juvenile adjudicated delinquent and committed to a youth services center or detained in a juvenile detention facility to be liable for the cost of the commitment, detention, or electronic monitoring. Ark. Code Ann. § 9-27-330(a)(13)(A).

The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for such commitment, detention, or electronic monitoring. Ark. Code Ann. § 9-27-330(a)(13)(B)(i).

The court shall take into account the past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct. Ark. Code Ann. § 9-27-330(a)(13)(B)(ii).

The court shall take into account, if the parent is a noncustodial parent, the opportunity the parent has had to correct the delinquent juvenile's conduct. Ark. Code Ann. § 9-27-330(a)(13)(B)(iii).

The court shall take into account any other factors the court deems relevant. Ark. Code Ann. § 9-27-330(a)(13)(B)(iv).

Suspend Driving Privileges

The court may order the Department of Finance and Administration (DF&A) to suspend the driving privileges. Ark. Code Ann. § 9-27-330(a)(15)(A).

The order shall be prepared and transmitted to the DF&A within twenty-four (24) hours after the juvenile has been found delinquent and is to have his driving privileges suspended. Ark. Code Ann. § 9-27-330(a)(15)(B).

The court may provide in the order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school or for other circumstances. Ark. Code Ann. § 9-27-330(a)(15)(C).

Medical Information to DYS or Detention

When a juvenile is committed to a youth services center (DYS) or detained in a juvenile detention facility and the juvenile is covered by private insurance, the court may order the parent or guardian to provide a copy of the health insurance policy and pharmacy card when available to the center or facility that has custody of the juvenile. Ark. Code Ann. § 9-27-330(a)(14).

Jurisdiction

The court shall specifically retain jurisdiction to amend or modify any orders pursuant to this section. Ark. Code Ann. § 9-27-330(b).

Delinquency Dispositions for Weapon Adjudications

If a juvenile is adjudicated delinquent for possession of a handgun, criminal use of prohibited weapons, or possession of a defaced firearm, the court shall:

Commit the juvenile to a juvenile detention facility, as provided in Arkansas Code Annotated section 9-27-330(a)(11);

Commit to DYS, as provided in Arkansas Code Annotated section 9-27-330(a)(1);
or

Place the juvenile on residential detention, as provided Arkansas Code Annotated section 9-27-330(a)(12). Ark. Code Ann. § 9-27-330(c)(1).

The court may take into consideration any preadjudication detention period served by the juvenile and sentence the juvenile to such time served. Ark. Code Ann. § 9-27-330(c)(2).

Delinquency Disposition for Escape Adjudications

When a juvenile is adjudicated for first-degree escape or second-degree escape, the court shall commit the juvenile to DYS and shall place the juvenile in a more restricted

facility in order to complete the remaining term of his or her commitment. Ark. Code Ann. § 9-28-214(b).

If the juvenile escaped from the most restrictive facility, the juvenile shall complete the remaining term of his commitment at that or a similar facility. Ark. Code Ann. § 9-28-214(b).

The juvenile may receive credit for time served. Ark. Code Ann. § 9-28-214(c).

Sex Offender Registration Hearing

Purpose

To determine if juvenile adjudicated should register as a sex offender. Ark. Code Ann. § 9-27-356(b)(2), (d).

Time Constraints

The court shall conduct a hearing within ninety (90) days of the sex offender registration motion. Ark. Code Ann. § 9-27-356(e)(1).

Petition

The prosecutor may file a petition requesting a juvenile to register as a sex offender. Ark. Code Ann. § 9-27-356(d).

Right To Counsel

The juvenile shall be represented by counsel at the sex offender registration hearing. Ark. Code Ann. § 9-27-356(e)(2)(A).

Burden of Proof

Clear and convincing evidence. Ark. Code Ann. § 9-27-356(f)(2).

Registration Hearing Factors

Court shall consider the following factors in making its decision to require the juvenile to register as a delinquent sex offender:

- (1) the seriousness of the offense;
- (2) the protection of society;
- (3) the level of planning and participation in the offense;
- (4) the previous sex offender history of the juvenile, including whether the juvenile has been adjudicated for prior sex offenses;

- (5) whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
- (6) the sex offender assessment and other relevant written reports or other materials relating to the juvenile's mental, physical, educational, and social history; and
- (7) any other factors deemed relevant by the court. Ark. Code Ann. § 9-27-356(e)(2)(A).

A juvenile's right against self-incrimination, the right to an adjudication hearing or appeal, the refusal to admit to an offense at the adjudication or in the assessment process shall not be used against the juvenile in the court's registration decision. Ark. Code Ann. § 9-27-356(e)(2)(B).

Juvenile Sex Offender Registration affirmed. Trial court did not take juvenile's refusal to admit rape in to consideration in violation of statute. In fact, court expressly stated that it did not do so in its findings in reviewing the assessor's recommendations. The court focused on the report and testimony that the juvenile failed to make any progress in a program specifically designed for him that did not require him to admit the rape and that despite treatment efforts he lacked motivation in completing the program. Although the assessor recommended additional treatment time, the trial court noted that rehabilitation was unlikely due to his failure to make significant progress and that his prognosis for completing the program was poor. [T.Y.R. v. State, 2010 Ark. App. 475.](#)

Court Findings

The court shall order a sex offender screening and risk assessment if a juvenile is adjudicated for the sex offenses listed in Arkansas Code Annotated section 9-27-356(a). Ark. Code Ann. § 9-27-356(a), (f)(2).

The court may order a juvenile adjudicated delinquent for an offense with a sexually motivated component to register upon recommendation of the Sex Offender Assessment Committee and following a hearing. Ark. Code Ann. § 9-27-356(b).

Appellant plead to a reduced charge of sexual assault in the third degree which requires a recommendation of the Sex Offender Assessment Committee prior to registration. No such recommendation was made and the court acted in excess of its authority and lacked subject matter jurisdiction to register the appellant. [M.S. v. State, 2011 Ark. App. 222.](#)

The court shall make written findings on all the factors set forth in subsection (e). Ark. Code Ann. § 9-27-356(f)(1).

Upon a finding by clear and convincing evidence that juvenile should or should not be registered as a sex offender, the court shall enter an order to that effect. Ark. Code Ann. § 9-27-356(f)(2).

Juvenile Sex Offender Registration affirmed. Appellant, at the age of 13, was charged with the rape of his two year old brother. The trial court made extensive findings: The offense was a brutal rape of a two year old and a serious felony which appellant did not dispute. Appellant was still a risk to society, had no family support, and was likely to re-offend. With regard to the level of planning the court described the physical force used in the rape and that appellate admitted to sexually abusing two other brothers and threatening them with harm if they told. As to previous history the court found that he had multiple victims, including foundling a male peer while in treatment where he was discharged as a treatment failure. With regard to rehabilitation programs the court found that he had been discharged as a treatment failure in one program, but had successfully completed another program. The court also found that the Community Notification Risk Assessment rating was moderate risk to re-offend, but the court found the witness that performed the assessment not credible and instead relied on a prior assessment and current safety plan that warned against allowing him to be alone with younger children. The appellate court noted that there was evidence in appellants favor including timing from his past sexual abuse, his current progress in treatment and that the Risk Assessment was the most recent assessment. The appellate court found that no one factor is determinative and due deference if given to the circuit court's credibility and evidence determinations. [C.M. v. State, 2010 Ark. App. 695.](#)

Registration Process

When the court orders a juvenile to register as a sex offender, the judge shall order either DYS or a juvenile probation officer to complete the registration process by:

- (1) completing the juvenile sex offender registration form;
- (2) providing a copy of the sex offender registration order, fact sheet, registration form, and Juvenile Sex Offender Rights and Responsibilities Form to the juvenile and his or her parent, guardian, or custodian and explaining this information to the juvenile, his or her parent, guardian or custodian;

- (3) mailing a copy of registration court order, fact sheets, and registration form to ACIC, Sex Offender Registry Manager, One Capitol Mall 4D-200, Little Rock, AR 72201;
- (4) providing local law enforcement agencies where the juvenile resides a copy of the sex offender registration form; and
- (5) ensuring that copies of all documents are forwarded to the court for placement in the court file. Ark. Code Ann. § 9-27-356(g).

Once the court orders the juvenile to register as a sex offender, juveniles are subject to the registration requirements set forth in Arkansas Code Annotated sections 12-12-904, -906, -908, -909 and -912. Ark. Code Ann. § 9-27-356(k).

Registration Removal

A juvenile may petition the court to have his or her name removed from the sex offender register at any time while the court has jurisdiction over the juvenile or until the juvenile turns twenty-one (21), whichever is later. Ark. Code Ann. § 9-27-356(h).

The court shall remove the juvenile's name from the sex offender register upon proof by a preponderance of the evidence that the juvenile does not pose a threat of safety to others. Ark. Code Ann. § 9-27-356(i).

If the court does not order removal, the juvenile shall remain on the sex offender register for ten (10) years from the last date on which the juvenile was adjudicated delinquent or found guilty as an adult for a sex offense or until the juvenile turns twenty-one (21), whichever is longer. Ark. Code Ann. § 9-27-356(j).

This appeal arises from a collateral proceeding and the State does not have to comply with the requirements in Rule 3 of the Arkansas Rules of Appellate Procedure – Criminal. The State's argument that the court was without jurisdiction to remove appellee from the sex offender registry because at the time of the order appellee was 25 years of age is without merit. [State v. V.H., 2013 Ark. 344.](#)

Revocation of Probation Hearings

Purpose

To determine if the juvenile violated the terms and conditions of probation. Ark. Code Ann. § 9-27-339(e).

Time Constraints

If a juvenile is taken into custody on an allegation of delinquency, DYS aftercare, probation, or court order and not released by the law enforcement officer or intake officer, a detention hearing shall be held by the court as soon as possible, but no later than seventy-two (72) hours after juvenile is taken into custody or, if seventy-two (72) hours ends on Saturday, Sunday or holiday, on the next business day. Otherwise, the juvenile shall be released. Ark. Code Ann. § 9-27-326(a).

A revocation hearing shall be held within a reasonable time after a petition is filed or within fourteen (14) days if the juvenile has been detained as a result of the filing of a petition for revocation. Ark. Code Ann. § 9-27-339(d).

Petition

The petition shall contain specific factual allegations of each condition violated. Ark. Code Ann. § 9-27-339(b).

The petition shall be served upon the juvenile, his or her attorney, and his or her parent, guardian, or custodian. Ark. Code Ann. § 9-27-339(c).

Burden of Proof

The State has the burden of proof by a preponderance of the evidence that the juvenile violated the terms and conditions of probation. Ark. Code Ann. § 9-27-339(e); Ark. Code Ann. § 9-27-325(h)(2)(B).

Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile proves that his or her default was not attributable to a purposeful refusal to obey the court or was not due to a failure on his or her part to make a good faith effort to obtain funds required for payment. Ark. Code Ann. § 9-27-339(f)(1).

The court shall consider juvenile's employment status, earning ability, financial resources, willfulness of juvenile's failure to pay, and any other circumstances that may have a bearing on juvenile's ability to pay. Ark. Code Ann. § 9-27-339(f)(2).

If court determines the juvenile's default in payment is excusable, the court may enter an order allowing the juvenile additional time for payment, reducing the amount of each installment, or revoking the fine, costs, restitution, or unpaid portion in whole or in part. Ark. Code Ann. § 9-27-339(f)(3).

Court's Options

Upon finding the juvenile violated terms and conditions of probation, the court may:

- (1) Extend probation;
- (2) Impose additional conditions of probation;
- (3) Make any disposition that could have been made at time probation was imposed under Arkansas Code Annotated section 9-27-330. Ark. Code Ann. § 9-27-339(e).

Appellant was previously on probation and as a condition of probation was required to obey all the state, federal and municipal laws. The subsequent delinquency adjudication is sufficient to support the court's revocation. R.W. v. State, 2010 Ark. App. 220.

Arkansas Code Annotated 9-27-339(e)(3) provides the court the authority upon revocation to make any disposition that could have been made at the time probation was imposed including detention and probation. Byrd v. State, 84 Ark. App. 203 (2003).

An adjudicated delinquent was ordered on probation and ordered to pay restitution. Subsequently the juvenile's probation was revoked due to possession of a controlled substance and the trial court ordered ninety (90) days of detention. The detention order disposed of the probation revocation pursuant to Arkansas Code Annotated section 9-27-339. The trial court lacked jurisdiction to enter a subsequent order to pay restitution which constituted a second disposition of the same petition. Bailey v. State, 348 Ark. 524 (2002).

DYS Aftercare Revocation Hearings

Purpose

To determine if the juvenile violated terms and conditions of the aftercare plan. Ark. Code Ann. § 9-27-364(b).

Terms and Conditions

After an adjudication of delinquency and upon commitment to DYS, the court may order compliance with a DYS aftercare plan upon a juvenile's release from the division, if recommended as part of the treatment plan submitted to the court. Ark. Code Ann. § 9-27-364(a)(1).

DYS or its designee shall provide the terms and conditions of the aftercare plan in writing to the juvenile before the juvenile's release from DYS. Ark. Code Ann. § 9-27-364(a)(2).

DYS or its designee shall provide the aftercare terms and conditions to the committing court, juvenile's attorney and the juvenile's legal parent, guardian, or

custodian, and the prosecutor before the juvenile's release from the division. Ark. Code Ann. § 9-27-364(a)(3).

DYS or its designee shall explain the terms of the aftercare plan to the juvenile and his or her legal parent, guardian, or custodian before the juvenile's release from DYS. Ark. Code Ann. § 9-27-364(a)(4).

Any violation of an aftercare term may be reported to the prosecuting attorney, who may initiate a petition in the committing court for violation of the aftercare plan. DHS may also initiate a petition for a violation with the committing court. Ark. Code Ann. § 9-27-364(b).

Time Constraints

If a juvenile is taken into custody on an allegation of delinquency, violation of DYS aftercare, violation of probation, or violation of a court order, a detention hearing shall be held by the court as soon as possible, but no later than seventy-two (72) hours after juvenile is taken into custody, or if seventy-two (72) hours ends on Saturday, Sunday or holiday, on the next business day. Otherwise, the juvenile shall be released. Ark. Code Ann. § 9-27-326(a).

The aftercare hearing shall be set within a reasonable time after a petition is filed or within fourteen (14) days if juvenile has been detained as a result of the filing of a petition for the aftercare violation. Ark. Code Ann. § 9-27-364(d).

Petition

The petition shall contain specific factual allegations constituting each violation of the aftercare plan. Ark. Code Ann. § 9-27-364(c).

The petition shall be served upon the juvenile, his or her attorney, and his or her parent, guardian, or custodian. Ark. Code Ann. § 9-27-339(c).

Burden of Proof

The petitioner has the burden of proof by a preponderance of the evidence that the juvenile violated the terms of the aftercare plan. Ark. Code Ann. § 9-27-364(e).

Court's Options

Upon finding that the juvenile violated the terms of the aftercare plan, the court may:

- (1) Extend the terms of the aftercare plan, if requested by DYS;
- (2) Impose additional conditions to the aftercare plan, if requested by DYS; or

- (3) Make any disposition that could have been made at the time commitment was order pursuant to Arkansas Code Annotated section 9-27-330. Ark. Code Ann. § 9-27-364(e).

XIV. EXTENDED JUVENILE JURISDICTION (EJJ) PROCEEDINGS

Extended Juvenile Jurisdiction (EJJ) Designation

The state may request an EJJ designation in a delinquency petition or file a separate motion if the:

Juvenile was under the age of thirteen (13) at the time of the alleged offense, is charged with:

capital murder, or murder in the first degree, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in Arkansas Code Annotated section 9-27-502. Ark. Code Ann. § 9-27-501(a)(1).

Juvenile, was age thirteen (13) at the time of the alleged offense and is charged with:

capital murder, or murder in the first degree. Ark. Code Ann. § 9-27-501(a)(2)(A).

Juveniles age thirteen (13) at the time of the alleged offense shall have an evaluation, pursuant to Arkansas Code Annotated section 9-27-502, and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity. Ark. Code Ann. § 9-27-501(a)(2)(B).

Juveniles ages fourteen through seventeen (14-17) at the time of the alleged offense, are charged with any of the following crimes:

- Capital murder;
- Murder in the first degree;
- Kidnapping;
- Aggravated robbery;
- Rape;
- First-degree battery; or
- Terroristic act. Ark. Code Ann. § 9-27-318(c)(2).
- Second-degree murder;
- Second-degree battery;

- Aggravated assault;
- Possession of a handgun on school property;
- Unlawful discharge of a firearm from a vehicle;
- Any felony committed while armed with a firearm;
- Soliciting a minor to join a criminal street gang;
- Criminal use of prohibited weapons;
- First-degree escape;
- Second-degree escape; or
- A felony attempt, solicitation, or conspiracy to commit any of the following offenses:
 - Capital murder;
 - First-degree murder;
 - Second-degree murder;
 - Kidnapping;
 - Aggravated robbery;
 - Rape;
 - First-degree battery;
 - First-degree escape; and
 - Second-degree escape. Ark. Code Ann. § 9-27-318(b)(1); Ark. Code Ann. §§ 9-27-501(a)(3)-(4).

The juvenile's attorney may file a motion to request EJJ if the state could have requested EJJ under subsection (a) of section 9-27-501. Ark. Code Ann. § 9-27-501(b).

Upon a finding by the criminal division of circuit court that a juvenile ages fourteen (14) through seventeen (17) and charged with a crime in Arkansas Code Annotated section 9-27-318(c)(2) should be transferred to the juvenile division of circuit court, the criminal division of circuit court may transfer the case as an extended juvenile jurisdiction case. Ark. Code Ann. § 9-27-318(i).

The appellate court found that, although the jurisdiction and the resulting sentence were not appealed, questions of jurisdiction may be reviewed. The circuit

court in its order stated it had jurisdiction based on Arkansas Code Annotated section 9-27-318(i), which refers to the criminal division transferring cases to juvenile division and did not include any crime for which appellant was charged with. The appellate court then reasoned that the extended jurisdiction was in error as was the resulting sentence to ADC. [R.B. v. State, 2013 Ark. App. 377](#).

Since the court denied the transfer, extended juvenile jurisdiction was not available. [Lofton v. State, 2009 Ark. 341](#).

Right to Counsel

An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews. [Ark. Code Ann. § 9-27-316\(a\)\(2\)](#); [Ark. Code Ann. § 9-27-504\(a\)](#).

This right to counsel cannot be waived. [Ark. Code Ann. § 9-27-317\(f\)](#); [Ark. Code Ann. § 9-27-504\(b\)](#).

Competency: Fitness to Proceed – Lack of Capacity

A juvenile's fitness to proceed may be put in issue by any party or the court in any delinquency proceeding; and [Ark. Code Ann. § 9-27-502\(a\)\(1\)](#).

In any juvenile delinquency proceedings where extended juvenile jurisdiction designation has been requested by any party and a party intends to raise lack of capacity as an affirmative defense. [Ark. Code Ann. § 9-27-502\(a\)\(2\)](#).

For a juvenile under the age of thirteen (13) at the time of the alleged offense and who is charged with capital murder or murder in the first degree, there shall be a presumption that:

- (1) the juvenile is unfit to proceed; and
- (2) he or she lacked capacity to:
 - (A) possess the necessary mental state required for the offense charged;
 - (B) conform his or her conduct to the requirements of law; and
 - (C) appreciate the criminality of his conduct. [Ark. Code Ann. § 9-27-502\(b\)\(1\)\(A\)](#).

The prosecution must overcome these presumptions by a preponderance of the evidence. [Ark. Code Ann. § 9-27-502\(b\)\(1\)\(B\)](#).

Evaluation

The court shall order an evaluation for such juveniles under the age of thirteen (13) and who are charged with capital murder or murder in the first degree to be

performed in accordance with Arkansas Code Annotated section 5-2-305(b), by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles. Ark. Code Ann. § 9-27-502(b)(2)(A).

Upon an order for evaluation, all proceedings shall be suspended and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure. Ark. Code Ann. § 9-27-502(b)(2)(B).

The court shall require the prosecuting attorney to provide to the examiner any information relevant to the evaluation, including, but not limited to:

- (1) the names and addresses of all attorneys involved;
- (2) information about the alleged offense; and
- (3) any information about the juvenile's background that the prosecutor deems relevant. Ark. Code Ann. § 9-27-502(b)(3).

This information must be provided to the examiner within ten (10) days after the court order for the evaluation and, when possible, this information shall be received prior to the juvenile's admission to the facility providing the inpatient evaluation. Ark. Code Ann. § 9-27-502(b)(5).

The court may require the attorney for the juvenile to provide any available information relevant to the evaluation, including, but not limited to:

- (1) psychiatric record,
- (2) school records, and
- (3) medical records. Ark. Code Ann. § 9-27-502(b)(4).
- (4) This information must be provided to the examiner within ten days after the court order for the evaluation and, when possible, this information shall be received prior to the juvenile's admission to the facility providing the inpatient evaluation. Ark. Code Ann. § 9-27-502(b)(5).

In reaching an opinion as to the juvenile's fitness to proceed, the examiner shall consider and make written findings regarding whether the juvenile's capabilities entail:

- (1) an ability to understand and appreciate the charges and their seriousness;
- (2) an ability to understand and realistically appraise the likely outcomes;

- (3) a reliable episodic memory so that he can accurately and reliably relate a sequence of events;
- (4) an ability to extend thinking into the future;
- (5) an ability to consider the impact of his actions on others;
- (6) verbal articulation abilities or the ability to express himself in a reasonable and coherent manner; and
- (7) logical decision-making abilities, particularly multi-factored problem solving or the ability to take several factors into consideration in making a decision. Ark. Code Ann. § 9-27-502(b)(7)(C)(ix)(b)(1).
- (8) Whether developmentally, he or she has:
 - (A) an ability to understand the charges;
 - (B) an ability to understand the roles of participants in the trial process, i.e., judge, defense attorney, prosecutor, witnesses, and jury and understand the adversarial nature of the process;
 - (C) an ability to adequately trust and work collaboratively with his attorney and provide a reliable recounting of events;
 - (D) an ability to reason about available options by weighing their consequences, including, but not limited to, weighing pleas, waivers, and strategies;
 - (E) an ability to disclose to an attorney a reasonably coherent description of facts pertaining to the charges, as perceived by the juvenile; and
 - (F) an ability to articulate his or her motives. Ark. Code Ann. § 9-27-502(b)(7)(C)(ix)(b)(2).

In reaching an opinion as to whether at the time the juvenile engaged in the conduct charged, as a result of immaturity or mental disease or defect, the juvenile lacked capacity, the examiner shall consider and make written findings regarding the following whether the juvenile:

- (1) was able to form the necessary intent;
- (2) knew which actions were wrong;
- (3) had reasonably accurate expectations of the consequences of his or her actions;

- (4) was able to act of his or her own volition;
- (5) had the capacity to behave intentionally;
- (6) had the capacity to engage in logical decision-making;
- (7) had the capacity to foresee the consequences of his or her actions; and
- (8) had the capacity to exert control over his or her impulses and to resist peer pressure. Ark. Code Ann. § 9-27-502(b)(7)(C)(x)(a)-(b).

In assessing the juvenile's competency, the examiner shall:

- (1) obtain and review all records pertaining to the juvenile, including but not limited to all the records listed above;
- (2) consider the social, developmental, and legal history of the juvenile, as related by the juvenile and a parent or guardian, and any other relevant source;
- (3) consider the current alleged offense;
- (4) conduct a competence abilities interview of the juvenile;
- (5) conduct an age-appropriate mental status exam using tests designed for juveniles;
- (6) conduct an age-appropriate psychological evaluation, using tests designed for juveniles; and
- (7) consider any other relevant test or information. Ark. Code Ann. § 9-27-502(b)(6).

Evaluations shall be filed with the court and distributed to the parties within ninety (90) days from the date of the order requesting such evaluation. Ark. Code Ann. § 9-27-502(b)(7)(A).

All such reports shall be filed under seal with the court and shall not be subject to the Freedom of Information Act at Arkansas Code Annotated sections 25-19-101et seq. Ark. Code Ann. § 9-27-502(b)(7)(B).

The evaluation report shall include, but not be limited to, the following:

- (1) identification of the juvenile and the charges;
- (2) listing of assessment methods used;

- (3) description of what the juvenile was told about the purpose of the evaluation;
- (4) social, clinical, and developmental history and the sources from which this information was obtained;
- (5) mental status data, including any psychological testing conducted and results;
- (6) comprehensive intelligence testing;
- (7) competence data assessing the competence-to-stand-trial abilities;
- (8) interpretation of the data, including clinical or developmental explanations for any serious deficits in competence abilities;
- (9) an opinion as to the juvenile's fitness to proceed; and
- (10) an opinion as to whether at the time the juvenile engaged in the conduct charged, as a result of immaturity or mental disease or defect, the juvenile lacked capacity to:
 - (A) possess the necessary mental state required for the offense charged;
 - (B) conform his conduct to the requirements of the law; and
 - (C) appreciate the criminality of his or her conduct. Ark. Code Ann. § 9-27-502(b)(7)(C).

Time Constraints

Evaluations shall be filed with the court and distributed to the parties within ninety (90) days from the date of the order requesting such evaluation. Ark. Code Ann. § 9-27-502(b)(7)(A).

Within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed. Ark. Code Ann. § 9-27-502(b)(8)(A).

Fitness to Proceed & Capacity Proceedings

The Court shall first determine the issue of fitness. The parties may stipulate to the findings and conclusions of the evaluation report, and the court may enter an order with respect to fitness. Ark. Code Ann. § 9-27-502(b)(8)(A) and B(i).

In order for the court to find a juvenile fit to proceed at the hearing, the prosecution shall be required to prove by a preponderance of the evidence the following:

- (1) The juvenile understands the charges and potential consequences;
- (2) The juvenile understands the trial process and proceedings against him or her; and
- (3) The juvenile has the capacity to effectively participate with and assist his or her attorney in a defense to prosecution. Ark. Code Ann. § 9-27-502(b)(8)(B)(ii)(a).

The court shall issue written findings as to whether the prosecution has met its burden with respect to such issues and whether the juvenile is fit or unfit to proceed. Ark. Code Ann. § 9-27-502(b)(8)(B)(ii)(b).

If the juvenile is found unfit to proceed:

The court shall commit the juvenile to the DHS or a residential treatment facility for a period not to exceed nine months, and the facility responsible for the juvenile shall be required to report to the court and the parties at least every thirty (30) days on the juvenile's progress. Ark. Code Ann. § 9-27-502(b)(9)(A)-(B).

If fitness to proceed is not restored within nine (9) months, the court shall convert the delinquency petition to a FINS petition. Ark. Code Ann. § 9-27-502(b)(9)(C).

If the juvenile is found fit to proceed, the court shall conduct a hearing wherein the state shall be required to prove by a preponderance of the evidence that at the time the juvenile engaged in the conduct charged he had the capacity to:

- (1) Possess the necessary mental state required for the offense charged;
- (2) Conform his conduct to the requirements of the law; and
- (3) Appreciate the criminality of his conduct. Ark. Code Ann. § 9-27-502(b)(10)(A).

In making such determination, the court shall consider the written findings of the examiner and any other relevant evidence and shall issue a written order with respect to such hearing. Ark. Code Ann. § 9-27-502(b)(10)(B).

If the court finds that the state did not meet its burden with regard to the capacity of the charged offense, but the juvenile had the capacity for a lesser

included offense, the court shall convert the EJJ petition to a delinquency petition. Ark. Code Ann. § 9-27-502(b)(10)(B)(ii).

If the court finds the state did not meet its burden with regard to the capacity of the charged offense or a lesser included offense, the court shall convert the delinquency petition into a FINS petition. Ark. Code Ann. § 9-27-502(b)(10)(B)(iii).

If the court finds that the state met its burden with regard to the capacity, the court shall:

- (1) Schedule a designation hearing as described in Arkansas Code Annotated section 9-27-503. Ark. Code Ann. § 9-27-502(b)(10)(B)(iv)(a).
- (2) Such a finding by the court that the state has met its burden on capacity does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing. Ark. Code Ann. § 9-27-502(b)(10)(B)(iv)(b).

Designation Hearing

Time Constraints

When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within thirty (30) days if the juvenile is detained, and no longer than ninety (90) days following the petition or motion requesting such designation.

The state filed a petition in February 2009 requesting an EJJ designation. At a pre-adjudication hearing, eight months later, the juvenile raised the issue that no EJJ Designation Hearing had been held within in ninety days of the petition as required by the statute. The state moved to nolle pros the charge in December 2009. In February 2010, almost a year later, the state filed a new petition with the same allegations and requested an EJJ Designation. Appellant argued that the court lost subject matter jurisdiction over EJJ in failing to hold an EJJ Designation Hearing within ninety days as required by statute. Appellant waived his right to a timely hearing because he did not object until after the ninety days had already passed. Appellant also argued that he was denied due process because of the potential adult sentence and the state was provided a “do over.” The court reasoned that there is nothing in the statute about the effect of noncompliance that indicates the time limit is jurisdictional. [D.B. v. State, 2011 Ark. App. 151.](#)

These time limitations shall be tolled during the pendency of any competency issues. Ark. Code Ann. § 9-27-503(a).

Burden of Proof

The party requesting the extended juvenile jurisdiction designation has the burden to prove by a preponderance of the evidence that such designation is warranted. Ark. Code Ann. § 9-27-503(b).

Designation Factors

The court shall make written findings considering all of the following factors in making its determination to designate a juvenile as an extended juvenile jurisdiction offender:

- (1) the seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) the culpability of the juvenile, including the level of planning and participation in the alleged offense;
- (5) the previous history of the juvenile, including whether the juvenile had been adjudicated delinquent and, if so, whether the offenses were against persons or property and any other previous history of antisocial behavior or patterns of physical violence;
- (6) the sophistication and maturity of the juvenile, as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
- (7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
- (8) whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
- (9) written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

- (10) any other factors deemed relevant by the court. Ark. Code Ann. § 9-27-503(c).

Note: Pursuant to Arkansas Code Annotated section 9-27-318(m), the circuit court may conduct an EJJ designation hearing and a transfer hearing at the same time.

Court's Findings

Upon finding that the juvenile shall be treated as an extended juvenile jurisdiction offender, the court shall:

- (1) enter its written findings;
- (2) inform the juvenile of his right to a jury trial; and
- (3) set a date for the adjudication. Ark. Code Ann. § 9-27-503(d).

If the court denies the request for extended juvenile jurisdiction, the court shall enter its written findings and proceed with the case as a delinquency proceeding. Ark. Code Ann. § 9-27-503(e).

Appellant argued that the state's motion for EJJ had previously been raised at a prior transfer hearing. While the transfer statute does allow a court to conduct a transfer hearing and EJJ designation hearing simultaneously, there was nothing in the original transfer order that referenced EJJ. The transfer to the juvenile division was at the directive of the Supreme Court in N.D. I and there was no direction as to an EJJ designation.

Appellant argued that this was a violation against double jeopardy because a life sentence for him as an adult was no longer possible after this court transferred the case without an EJJ designation he cannot be subject to a life sentence as an EJJ designee. The first two protections of double jeopardy are not applicable because N.D. has not been acquitted or convicted of any of the underlying offenses in the petition. Appellant's claim that he could face multiple punishments for the same offense is premature because he has not been adjudicated, nor has there been a disposition. Finally, appellant's argument that his due process rights were violated fails for failure to provide any citation or convincing arguments. [N.D. v State, 2012 Ark. 265](#).

Appeal

For purposes of appeal, a designation order is a final, appealable order and shall be subject to an interlocutory appeal. Ark. Code Ann. § 9-27-503(f).

Extended Juvenile Jurisdiction (EJJ) Adjudication & Disposition Hearings

Jury Trial

An extended juvenile jurisdiction offender and the state shall have the right to a jury trial at the adjudication hearing. Ark. Code Ann. § 9-27-325(a)(1)(B); Ark. Code Ann. § 9-27-505(a).

The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender. Ark. Code Ann. § 9-27-325(a)(2); Ark. Code Ann. § 9-27-505(b).

The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney. Ark. Code Ann. § 9-27-325(a)(3); Ark. Code Ann. § 9-27-505(c)(1).

The waiver shall be in writing and signed by the juvenile, the juvenile's attorney, and the juvenile's parent or guardian, and the court shall inquire on the record to ensure that the waiver was made in a knowing, intelligent, and voluntary manner. Ark. Code Ann. § 9-27-505(c)(2).

All provisions of the Arkansas Code of 1987 Annotated and the Arkansas Rules of Criminal Procedure, not in conflict with this subchapter, that regulate criminal jury trials in circuit court shall apply to jury trials for juveniles subject to extended juvenile jurisdiction proceedings. Ark. Code Ann. § 9-27-505(d).

Time Constraints

The adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure. Ark. Code Ann. § 9-27-505(e).

Burden of Proof

The state bears the burden to prove the charges in the petition beyond a reasonable doubt. Ark. Code Ann. § 9-27-505(f).

EJJ Adjudication

If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall:

- (1) order any of the juvenile dispositions authorized by Arkansas Code Annotated section 9-27-330; and
- (2) suspend the imposition of adult sentence pending court review. Ark. Code Ann. § 9-27-505(g)(1); Ark. Code Ann. § 9-27-506.

If the juvenile is adjudicated delinquent for an offense that would not have subjected him to extended juvenile jurisdiction, the court shall enter any of the delinquency dispositions available at Arkansas Code Annotated section 9-27-330. Ark. Code Ann. § 9-27-505(g)(2).

Extended Juvenile Jurisdiction Court Review Hearing

Adult Sentence Petition

The state may petition the juvenile court at any time to impose an adult sentence if the juvenile:

- (1) has violated a juvenile disposition order;
- (2) has been adjudicated delinquent or found guilty of committing a new offense; or
- (3) is not amenable to rehabilitation in the juvenile system. Ark. Code Ann. § 9-27-507(a).

Court Disposition

If the court finds by a preponderance of the evidence that the juvenile has violated a juvenile disposition order, has been found delinquent or guilty of committing a new offense, or is not amenable to rehabilitation in the juvenile system, the court may:

- (1) amend or add any juvenile disposition authorized by section 9-27-330; or
- (2) exercise its discretion to impose the full range of sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment. Ark. Code Ann. § 9-27-507(b).

A sentence of imprisonment shall not exceed forty (40) years, except for juveniles adjudicated for capital murder and murder in the first degree who may be sentenced for any term, up to and including life. Ark. Code Ann. § 9-27-507(b)(2)(A)(ii).

Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders. Ark. Code Ann. § 9-27-507(b)(2)(B).

A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility. Ark. Code Ann. § 9-27-507(b)(2)(C).

Review and Modification of EJJ Disposition

The juvenile may petition the court to review and modify the disposition at any time. Ark. Code Ann. § 9-27-507(c)(1)(A).

If the juvenile's initial petition is denied, the juvenile must wait one year from the date of the denial to file a new petition for modification. Ark. Code Ann. § 9-27-507(c)(1)(B).

DHS may petition the court to review and modify the disposition at any time. Ark. Code Ann. § 9-27-507(c)(2)(A).

If DHS's initial petition for review and modification is denied, DHS must wait one year from the date of the denial to file a new petition for modification, unless DHS has clear and convincing evidence that the juvenile has been rehabilitated. Ark. Code Ann. § 9-27-507(c)(2)(B).

If the state or the juvenile files a petition to modify the juvenile court's disposition order before six months prior to the juvenile's eighteenth birthday, the filing party bears the burden of proof. If the juvenile is sixteen (16) or seventeen (17) when the EJJ petition is filed, then the state or juvenile may petition the court after the 18th birthday, but no later than six months before the juvenile's 21st birthday. Ark. Code Ann. § 9-27-507(d).

If no hearing has been conducted six months prior to the juvenile's eighteenth birthday or six months prior the juvenile's 21st birthday, if the juvenile was sixteen (16) or seventeen (17) when the EJJ petition was filed, the court shall conduct a hearing to determine whether to release the juvenile, amend, or add any juvenile disposition, or impose an adult sentence. In making its determination, the court shall consider as follows:

- (1) the experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;
- (2) the nature of the offense or offenses and the manner in which the offense or offenses were committed;
- (3) the recommendations of the professionals who have worked with the juvenile;
- (4) the protection of public safety;
- (5) opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation; and
- (6) victim impact evidence admitted pursuant to Arkansas Code Annotated section 16-97-103. Ark. Code Ann. § 9-27-507(e)(1)-(2).

The trial court was affirmed in imposing a 20-year adult sentence following an EJJ Review Hearing. Appellant argued that he was rehabilitated and could not be sentenced as an adult on the original offense alone. The appellate court found that evidence of rehabilitation must be assessed in light of the factors listed in Arkansas Code Annotated section 9-27-507(e)(2). Here, appellant exhibited a pattern of rule-breaking in his rehabilitation program. Due to appellant's age, he was not eligible for the juvenile aftercare program, and there was no equivalent program with any adult probation program. The court also considered the facts of the underlying crime of first-degree murder and residential burglary. [Barton v. State, 2011 Ark. App. 117.](#)

If the state seeks to impose an adult sentence, the state must prove by a preponderance of the evidence that the imposition of an adult sentence is appropriate and that public safety requires imposition. [Ark. Code Ann. § 9-27-507\(e\)\(3\).](#)

Following a hearing, the court may enter any of the following dispositions:

- (1) release the juvenile;
- (2) amend or add any juvenile disposition; and
- (3) exercise its discretion to impose the full range of sentencing available in criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment. [Ark. Code Ann. § 9-27-507\(e\)\(4\)\(A\).](#)

A sentence of imprisonment shall not exceed forty (40) years, except for juveniles adjudicated for capital murder or murder in the first degree who may be sentenced for any term, up to and including life. [Ark. Code Ann. § 9-27-507\(e\)\(4\)\(A\)\(iii\)\(b\).](#)

Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders. [Ark. Code Ann. § 9-27-507\(e\)\(4\)\(B\).](#)

A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility. [Ark. Code Ann. § 9-27-507\(e\)\(4\)\(C\).](#)

Release

A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder or murder in

the first degree. Ark. Code Ann. § 9-27-507(b)(2)(D)(i); Ark. Code Ann. § 9-27-507(e)(4)(D)(i).

If release is ordered, the court shall impose a period of probation for not less than three (3) years. Ark. Code Ann. § 9-27-507(b)(2)(D)(ii); Ark. Code Ann. § 9-27-507(e)(4)(D)(ii).

Extended Juvenile Jurisdiction (EJJ) Records

Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for:

- (1) Ten years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult, or until the juvenile's twenty-first birthday, whichever is longer. Ark. Code Ann. § 9-27-508(a).
- (2) If an adult sentence is imposed upon an extended juvenile jurisdiction offender, the records of that case shall be considered adult criminal records.
 - (A) The juvenile court shall enter an order transferring the juvenile records to the clerk who is the custodian of adult criminal records.
 - (B) The clerk shall assign a criminal division of circuit court docket number and shall maintain the file as if the case had originated in the criminal division of the circuit court. Ark. Code Ann. § 9-27-508(b).

XV. FAMILIES IN NEED OF SERVICES (FINS) PROCEEDINGS

Note: Most FINS cases do not come to court by way of an emergency removal; however, there are some rare cases that do result in emergency removals and as a result a probable cause hearing is necessary. Common examples include cases that should have been filed as dependency-neglect and juveniles who have acute hospitalization needs resulting from drugs, alcohol, or mental illness.

Probable Cause Hearings

Purpose

Held within five (5) business days to determine if probable cause to issue an emergency ex parte order continues to exist. Ark. Code Ann. § 9-27-315(a)(1)(A).

Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists that immediate emergency custody is necessary to:

- (1) protect the juvenile's health or physical well-being from immediate danger; or
- (2) prevent juvenile's removal from state; Ark. Code Ann. § 9-27-314(a)(1).

Court shall issue an ex parte order to provide specific appropriate safeguards to protect the juvenile when there is probable cause to believe an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger. Ark. Code Ann. § 9-27-314(a)(2)(A).

Specific safeguards shall include the court's ability to restrict a legal custodian's right to:

- (1) having contact with the juvenile;
- (2) removing the juvenile from a placement if the legal custodian placed or allowed the child to remain in that home for more than six (6) months and DHS has no immediate health, physical or well-being concerns. Ark. Code Ann. § 9-27-314(a)(2)(B).

When there is probable cause to believe that a juvenile is a dependent juvenile, the court shall issue an ex parte order for emergency custody to DHS. Ark. Code Ann. § 9-27-314(a)(3).

Dependent juvenile means:

- a child of a parent in DHS custody;

- a child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child; however if the reason for incarceration is related to the health and safety of the child, the child is not dependent;
- a child whose parent or guardian is incapacitated so they cannot care for the juvenile, and they have no appropriate relative or friend to care for the child;
- a child whose custodial parent dies and no appropriate relative or friend is able to care for the child;
- a child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- a safe-haven baby; or
- a child who has disrupted his or her adoption and the adoptive parents have exhausted resources available to them; or
- a child who has been a victim of human trafficking as a result of threats, coercion, or fraud. Ark. Code Ann. § 9-27-303(17).

Notice

The emergency ex parte order shall include notice to all defendants and respondents named in the petition of the right to:

- (1) a hearing and procedure for obtaining a probable cause hearing within five (5) business days of issuance of ex parte order;
- (2) representation by counsel; and
- (3) to appointed counsel, if eligible, and procedure for obtaining appointed counsel. Ark. Code Ann. § 9-27-314(b)(1)-(3).

The court may appoint counsel for the parent or custodian for whom legal custody was removed in the emergency ex parte order. Ark. Code Ann. § 9-27-316(h)(1)(B).

Note: The state only pays for indigent counsel for parents or guardians from whom legal custody is removed and upon request in dependency-neglect cases.

Location and telephone number of court. Ark. Code Ann. § 9-27-314(b)(4).

Immediate notice of order shall be given to juvenile's parents, guardians, or custodian and the juvenile by petitioner or court. Ark. Code Ann. § 9-27-314(c)(1).

All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by court. Ark. Code Ann. § 9-27-314(c)(2).

Time Constraints

Court shall conduct a probable cause hearing within five (5) business days of issuance of the emergency ex parte order. Ark. Code Ann. § 9-27-315(a)(1)(A); Ark. Code Ann. § 9-27-314(b)(1).

A written order shall be filed by the court or by a party or party's attorney, as designated by the court, within (30) days of the date of the probable cause hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-315(d)(3).

The court shall set the date and time for the adjudication hearing at probable cause hearing. The adjudication hearing shall be held within thirty (30) days of the probable cause hearing and may be continued for no more than sixty (60) days for good cause shown. Ark. Code Ann. § 9-27-315(d); Ark. Code Ann. § 9-27-327(a)(1).

Hearing Limitations

The hearing shall be limited to determining whether there was probable cause to protect the juvenile and whether probable cause warrants continued protection. Ark. Code Ann. § 9-27-315(a)(1)(B)(i).

All other issues, with the exception of custody and services, shall be reserved by the court until the adjudication hearing. Ark. Code Ann. § 9-27-315(a)(2)(A).

All probable cause hearings are miscellaneous hearings. The Arkansas Rules of Evidence do not apply. Ark. Code Ann. § 9-27-315(e); Ark. R. Evid. 1101(b)(3).

Burden of Proof

Petitioner has burden of proof by a preponderance of the evidence that probable cause exists for continuation of the emergency order. Ark. Code Ann. § 9-27-315(b).

Juvenile's Right to Counsel

The juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer during the initial intake interview, and by the court at the juvenile's first appearance of the right to be represented by counsel at all stages of the proceeding. Ark. Code Ann. § 9-27-316(a).

Arkansas Code Annotated section 9-27-316 makes it clear that in both delinquency and FINS cases a juvenile has a right to counsel and that an

attorney ad litem may be appointed who represents the best interests of the juvenile, but that this is not intended to be the same person. Because the juvenile was denied counsel, the trial court exceeded its authority and the order was thus invalid. The petitioner's writ of habeas corpus was granted. Since the writ of habeas is granted the writ of certiorari is moot. [Ark. Dep't of Human Servs. v. Mainard, 358 Ark. 204 \(2004\).](#)

Waiver of counsel shall be accepted upon a finding by the court from clear and convincing evidence that after questioning the juvenile that:

- (1) the juvenile fully understands the full implications of the right to counsel;
- (2) the juvenile freely, voluntarily, and intelligently wishes to waive the right to counsel; and
- (3) the parent, guardian, custodian, or counsel for the juvenile have agreed with the juvenile's decision to waive counsel; however, this agreement may only be accepted if the court finds that:
 - (A) the person freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver;
 - (B) the person has no adverse interest to the juvenile; and
 - (C) the person consulted with the juvenile in the juvenile's decision to waive counsel. [Ark. Code Ann. § 9-27-317\(a\).](#)

No waiver of counsel shall be accepted for a juvenile in any of the following cases:

- (1) the parent, guardian, or custodian has filed, initiated, or requested the removal of the juvenile from the home; [Ark. Code Ann. § 9-27-317\(d\).](#)
- (2) counsel was appointed due to the likelihood of the juvenile's commitment to an institution; or [Ark. Code Ann. § 9-27-317\(e\).](#)

Court Findings

The court shall order that probable cause continues to exist to protect the juvenile, and if the court determines that the juvenile can safely be returned to his or her home pending adjudication and it is in the best interest of the juvenile, the court shall so order. [Ark. Code Ann. § 9-27-315\(a\)\(1\)\(B\); Ark. Code Ann. § 9-27-315\(c\).](#)

Circuit court affirmed for placing the custody of a child with his paternal grandparents who lived in another state at the probable cause hearing and closing the case. DHS appealed on five grounds. The case arose when the police were contacted when a two-year-old was left locked in a car at the mall. The mother appeared and DHS took a 72-hour hold and filed an emergency petition for custody. Prior to the probable cause hearing, the child's father filed a paternity petition to establish paternity and to request the child to be placed in the custody of his parents.

At the probable cause hearing, both parents and the maternal and paternal grandmother testified they all lived in Sallisaw, Oklahoma. They also testified that the child had lived with the paternal grandparents since April 2005, and they all wanted custody to remain with the paternal grandparents. The paternal grandmother testified that the child was covered on their health insurance policy. Evidence also included an approved home study from a licensed social worker for the Arkansas without objection, a background check, testimony that the grandparents had provided excellent care for the child, and several letters from community members stating that the paternal grandparents were qualified and financially able to care for the child.

The circuit court found that probable cause existed at the time of removal; the father was the legal father; an approved home study was performed and custody should be placed with the grandparents. Since no further services were found to be necessary, the court closed the case.

DHS argued that the court could not close the case prior to adjudication. The Court held that the statute does not require the court to hold adjudication. Second, DHS argued that the home study was not preformed by a licensed "certified" social worker; however, DHS did not object to the social worker's qualification or the home study at the hearing. DHS's third argument was that DHS's third argument was that a court may not grant permanent custody at a probable cause hearing. Arkansas Code Annotated section 9-27-315(a)(1)(B) specifically provides that the courts may enter orders as to "issues to custody and delivery of services" at probable cause hearings. [Ark. Dep't of Human Servs. v. Jones., 97 Ark. App. 267 \(2007\).](#)

Emergency hearing orders are not final and appealable orders. [Dover v. Ark. Dep't. of Human Servs., 62 Ark. App. 37 \(1998\)](#); [Johnston v. Ark. Dep't. of Human Servs., 55 Ark. App. 392 \(1996\).](#)

Federal IV-E Adoption Safe Families Act (ASFA) Initial Removal Finding

In the initial order of removal, the court shall make specific findings:

- (1) Whether it is contrary to the welfare of the juvenile to remain at home;
- (2) Whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
- (3) Whether removal is in the best interest of the juvenile. Ark. Code Ann. § 9-27-328(b)(1).

Where the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services provided, the agency is deemed to have made reasonable efforts to prevent or eliminate the need for removal. Ark. Code Ann. § 9-27-328(c).

Appellant strangled his 12-year-old blind daughter in November of 1994. The stepmother took custody of child and went to a women's shelter. The appellant began divorce proceedings and asked for the custody of his daughter. The chancellor ordered the daughter to be returned to the father on January 25, 1995. That same day the prosecutor filed a FINS petition in juvenile court requesting an emergency hearing. At this hearing testimony was given that the daughter would either run away or kill herself if returned to her father. The judge placed the daughter in foster care.

Appellant filed a petition for habeas corpus claiming that the court was required by Arkansas Code Annotated section 9-27-328 to make specific findings prior to removing a child from a parent's custody and that in the absence of such findings, his daughter should be returned to him. The court found that reasonable efforts are deemed to have been made where the state agency's first contact with the family occurred during an emergency in which the juvenile could not safely remain at home.

Appellant argued the agency's first contact was when DHS began its investigation shortly after the incident in November and that it was not an emergency. The court found that even if the investigation was the first contact by the agency, that it occurred as the result of an emergency situation and that the first affirmative action taken by the state was on January 25, the day that it appeared the child would be returned to the appellant. Such a return constituted an emergency. [Gullick v. Ark. Dep't of Human Servs., 326 Ark. 475 \(1996\).](#)

FINS Adjudication Hearings

Purpose

To determine whether the allegations in petition are substantiated by proof. Ark. Code Ann. § 9-27-327(a).

FINS means any family with a juvenile who evidences behavior that includes, but is not limited to, being a truant, a runaway, or one habitually disobedient to the reasonable and lawful commands of his parents. Ark. Code Ann. § 9-27-303(24).

Juvenile's Right to Counsel

The juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking the juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance of the right to be represented by counsel at all stages of the proceeding. Ark. Code Ann. § 9-27-316(a).

In this FINS case, the juvenile was denied the right to counsel in a contempt proceeding. Arkansas Code Annotated section 9-27-316 makes it clear that in both delinquency and FINS cases a juvenile has a right to counsel, and an attorney ad litem may be appointed who represents the best interests of the juvenile, but that this is not intended to be the same person. Because the juvenile was denied counsel, the trial court exceeded its authority, and the order was thus invalid. The petitioner's writ of habeas corpus was granted. Since the writ of habeas is granted the writ of certiorari is moot. [Ark. Dep't of Human Servs. v. Mainard, 358 Ark. 204 \(2004\)](#).

Waiver of counsel shall be accepted upon a finding by the court based on clear and convincing evidence that after questioning the juvenile that:

- (1) the juvenile fully understands the full implications of the right to counsel;
- (2) the juvenile freely, voluntarily, and intelligently wishes to waive the right to counsel; and
- (3) the parent, guardian, or custodian for the juvenile have agreed with the juvenile's decision to waive counsel; however, this agreement may only be accepted if the court finds that:
 - (A) the person freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver;
 - (B) the person has no adverse interest to the juvenile; and

- (C) the person consulted with the juvenile in the juvenile's decision to waive counsel. Ark. Code Ann. § 9-27-317(a)-(b).

No waiver of counsel shall be accepted for a juvenile in any of the following cases:

- (1) the parent, guardian, or custodian has filed, initiated, or requested the removal of the juvenile from the home; Ark. Code Ann. § 9-27-316(d).
- (2) counsel was appointed due to the likelihood of the juvenile's commitment to an institution. Ark. Code Ann. § 9-27-316(e).

Studies & Reports

The court may order studies, evaluations, or predisposition reports, if needed, that bear on the disposition, following adjudication. Ark. Code Ann. § 9-27-327(d).

Reports shall be written and be provided to all parties at least two (2) days prior to a disposition hearing. Ark. Code Ann. § 9-27-327(e)(1).

All parties shall be given a fair opportunity to controvert any part of such reports. Ark. Code Ann. § 9-27-327(e)(2).

FINS Disposition Hearings

Purpose

To determine what action will be taken following an adjudication and to enter orders consistent with the disposition alternatives. Ark. Code Ann. § 9-27-329(a).

The court shall consider the disposition alternatives with preference for the least restrictive disposition consistent with the best interest and welfare of the juvenile and society. Ark. Code Ann. § 9-27-329(d).

Evidence

The court may admit into evidence any victim impact statements and studies or reports that have been ordered, even if not admissible at adjudication hearing. Ark. Code Ann. § 9-27-329(f).

FINS Disposition Alternatives

As explained in detail below, if a family is adjudicated a FINS, the court may enter any of the following dispositions: order family services, remove of the juvenile from the home, transfer custody of the juvenile, order parent training, order electronic monitoring / residential detention, order community service, place terms of supervision

on the juvenile, impose a fine, assess court costs, order a juvenile service fee, order contempt sanctions, and/or order six-month review hearings.

Family Services - Ark. Code Ann. § 9-27-332(a)(1)(A).

To rehabilitate the juvenile and his or her family.

If DHS is the provider of family services, the services shall be limited to DHS's community-based providers or contractors and those services for which the family applies and is determined eligible. Ark. Code Ann. § 9-27-332(a)(1)(B)(i).

To prevent removal:

When DHS is provider of family services, the court shall make written findings outlining how the each service is intended to prevent removal. Ark. Code Ann. § 9-27-332(a)(1)(B)(ii).

DHS appealed a circuit court order directing DHS to provide assistance to appellee's family to purchase furniture for their home. On appeal, DHS argued that there was insufficient evidence to support the circuit court's findings and that the circuit court failed to make written findings as required by Arkansas Code Annotated section 9-27-332(a)(1)(B)(ii). The court of appeals reversed, holding that the case was an exception to the mootness doctrine. [Ark. Dep't of Human Servs. v. White, 2014 Ark. App. 193.](#)

DHS appealed an order directing the agency to pay for school uniforms and maternity clothes for a pregnant teenager in a FINS case. The appellate court reversed and noted that the trial court failed to comply with the statute that requires the court to make written findings outlining how each service is intended to prevent removal. The appellate court also found that the trial court made conclusions of law based on the judge's knowledge and not evidence and testimony by the petitioner. [Ark. Dep't of Human Servs. v. Mitchel, 2012 Ark. App. 240.](#)

"Family services" means relevant services provided to the juvenile and his or her family, included, but not be limited to:

- (1) child care,
- (2) homemaker services,
- (3) crisis counseling,
- (4) cash assistance,

Cash Assistance does not include long-term financial assistance that is the equivalent of a board payment, adoption subsidy, guardianship subsidy, or assistance for car insurance. Ark. Code Ann. § 9-27-303(10)(B).

- (5) transportation,
- (6) family therapy,
- (7) physical, psychiatric, or psychological evaluation,
- (8) counseling, and
- (9) treatment. Ark. Code Ann. § 9-27-303(25)(A).

Prior to the court placing a juvenile in a residential placement, the court shall comply with the mental health assessments as required by Act 1959 of 2005. Ark. Code Ann. §§ 9-27-601—603.

DHS appealed a circuit court order directing DHS to provide assistance to appellee's family to purchase furniture for their home. On appeal, DHS argued that there was insufficient evidence to support the circuit court's findings and that the circuit court failed to make written findings as required by Arkansas Code Annotated section 9-27-332(a)(1)(B)(ii). The court of appeals reversed, holding that the case was an exception to the mootness doctrine; that no evidence was presented to support the court's finding that these services were necessary to prevent the child's removal; and that the circuit court failed to provide the required written findings. [Ark. Dep't of Human Servs. v. White, 2014 Ark. App. 193.](#)

DHS appealed an order directing the agency to pay for school uniforms and maternity clothes for a pregnant teenager in a FINS case. The appellate court reversed and noted that the trial court failed to comply with the statute that requires the court to make written findings outlining how each service is intended to prevent removal. The appellate court also found that the trial court made conclusions of law based on the judge's knowledge and not evidence and testimony by the petitioner. The appellate court went further to hold that the trial court also erred in its interpretation of the statute concerning family services. Family services are designed to prevent removal of a juvenile; however, removal only occurs when a juvenile is in immediate danger and removal is necessary to prevent serious harm, illness or injury. The appellate court found that lacking clothing did not pose an immediate danger to the juvenile's physical well-being that would result in a removal from her home.

The court recognized that neglect includes a failure or refusal to provide the necessary education required by law. However, there is an exception when such failure is due to the financial inability of the person legally responsible and no services for relief have been offered. [Ark. Dep't of Human Servs. v. Mitchel](#), 2012 Ark. App. 240.

The trial court was upheld in ordering DHS to pay the Brown School \$48,000. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary.

The General Assembly has waived sovereign immunity as to DHS when a court orders DHS to provide family services to prevent a juvenile from being removed from a parent. DHS's policy not to provide financial assistance for out-of-state treatment is not binding on the court's order. There was not a violation of the separation of powers doctrine because the court simply ordered the juvenile to be placed in a residential treatment facility. The placement was made to Brown and the court subsequently ordered that the juvenile remain there. DHS recommended that the juvenile remain at Brown in a report to the court dated after Medicaid benefits had been denied.

Compliance with Arkansas Code Annotated section 20-46-106 (regarding out-of-state placements) is DHS's responsibility and the fact that the court was eager to get treatment in no way absolved DHS from its responsibility under this section. The court also noted that the purpose of the section is to ensure whenever possible that juveniles receive treatment in state; however, this was not the case as no facilities were available at that time in Arkansas. [Ark. Dep't of Human Servs. v T.B.](#), 347 Ark. 593 (2002).

The court ordered DHS to provide adequate housing, including electric and water utilities and held DHS and Sandi Doherty in willful contempt for failing to abide by its order. DHS argued that the trial court lacked the statutory authority to order family services. Arkansas Code Annotated section 9-27-307(17) defines family services as relevant services, including... cash assistance... to prevent a juvenile from being removed from a parent....The trial court did not exceed the statutory criteria for family services. At the September 30 hearing, the court unequivocally stated that it was ordering services to prevent R.P. from being removed from her mother.

The trial court's order of family services was not defective because it failed to make specific written findings. Arkansas Code Annotated section 9-27-328 requires specific findings only when the court orders removal from a custodial parent. DHS' contention that the court's order did not comply

with its policy is without merit. The juvenile court's orders do not have to comply with DHS policy. Further, the record does not show that DHS could not have paid the bills and in fact funds were available.

DHS argued that it could not be made a defendant without waiving sovereign immunity and that the court's order coerced DHS into bearing a financial burden which is barred. There is a waiver of sovereign immunity where an act by the legislature has created a specific waiver of immunity. The Juvenile Code expressly empowers the court to order family services in FINS cases (Arkansas Code Annotated section 9-27-330) and family services includes cash assistance Arkansas Code Annotated section 9-27-303(17). Pursuant to Arkansas Code Annotated section 9-27-328(a), a court is required to order family services appropriate to prevent removal. Therefore, the General Assembly has specifically waived sovereign immunity as to DHS in such cases.

Finally, DHS argued that the court's order violated separation of powers, but this theory was not raised or developed below with respect to setting aside the court's September 30 order. [Ark. Dep't of Human Servs. v. R.P., 333 Ark. 516 \(1998\)](#).

Family services are provided to:

- (1) Prevent a juvenile from being removed from a parent, guardian, or custodian;

DHS appealed a circuit court order directing DHS to provide assistance to appellee's family to purchase furniture for their home. The court of appeals held that there was no evidence presented to support the court's finding that these services were necessary to prevent the child's removal; and that the circuit court failed to provide the required written findings. [Ark. Dep't of Human Servs. v. White, 2014 Ark. App. 193](#).

DHS appealed an order directing the agency to pay for school uniforms and maternity clothes for a pregnant teenager in a FINS case. The appellate court held that the trial court erred in its interpretation of the statute concerning family services. Family services are designed to prevent removal of a juvenile; however, removal only occurs when a juvenile is in immediate danger and removal is necessary to prevent serious harm, illness or injury. The appellate court found that lacking clothing did not pose an immediate danger to the juvenile's physical well-being that would result in a removal from her home.

The court recognized that neglect includes a failure or refusal to provide the necessary education required by law. However, there is an exception

when such failure is due to the financial inability of the person legally responsible and no services for relief have been offered. [Ark. Dep't of Human Servs. v. Mitchel, 2012 Ark. App. 240.](#)

- (2) Reunite a juvenile with a parent, guardian, or custodian from whom he or she was removed;
- (3) Implement a permanent plan of adoption, guardianship in a dependency-neglect case; or
- (4) Rehabilitate a juvenile in a FINS or a delinquency case [Ark. Code Ann. § 9-27-303\(25\)\(B\)\(i\)-\(iv\).](#)

At least five (5) working days prior to ordering DHS to provide or pay for services, excluding community-based providers, the court shall:

- (1) fax written notice of intent to order services to the DHS Director and the local OCC attorney; and
- (2) provide DHS an opportunity to be heard at any hearing at which DHS is ordered to provide family services. [Ark. Code Ann. § 9-27-333\(a\)-\(b\).](#)

Failure to provide DHS five (5) days' notice renders any part of the order pertaining to the department void. [Ark. Code Ann. § 9-27-333\(c\).](#)

In all cases in which family services are ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay, in whole or in part, for said services. [Ark. Code Ann. § 9-27-333\(e\)\(1\).](#)

- (1) The court's finding and supporting evidence shall be made in writing in the order requiring family services. [Ark. Code Ann. § 9-27-333\(e\)\(2\).](#)
- (2) If the court determines that the parent, guardian, or custodian is able to pay, in whole or part, for said services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian can pay for the family service(s) ordered and ordering the parent, guardian, or custodian to pay such amount periodically to the provider from whom family services are received.

"Periodically" is deemed to be a period of time no greater than once per month.

Parent, guardian, and custodian refer to the individual or individuals from whom custody was removed. [Ark. Code Ann. § 9-27-333\(e\)\(3\)-\(4\).](#)

In making its determination, the court shall consider the following factors:

- (1) the financial ability of the parent, both parents, the guardian(s), or custodian(s) to pay for such services;
- (2) the past efforts of the parent, both parents, the guardian(s), or the custodian(s) to correct the conditions that resulted in the need for family services; and
- (3) any other factors which the court deems relevant. Ark. Code Ann. § 9-27-333(e)(5).

The appellate noted that if the family's inability to pay for clothing was an issue, the court was required to determine the parent's ability to pay for services and make that determination supported by evidence. [Ark. Dep't of Human Servs. v. Mitchel, 2012 Ark. App. 240.](#)

The court shall not specify a particular provider for placement or family services when DHS is the payor or provider except:

- (1) The court may order a child to remain in a placement if the court finds the placement is in the child's best interest after hearing evidence from all the parties.
- (2) A court may order a child to be placed into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties. Ark. Code Ann. § 9-27-333(d)(1).

In a FINS case where the child was put into DHS custody, the trial court was upheld in ordering DHS to pay the Brown School \$48,000. The trial court did not err because it ordered placement in a "residential treatment facility" and did not order a specific named placement facility. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary. [Ark. Dept. of Human Servs. v. T.B., 347 Ark. 593 \(2002\).](#)

An order directing DHS to pay appellee a foster care board payment for a six-month period was reversed because the court lacked the statutory authority to order DHS to pay. Appellee was not a certified foster parent and was not entitled to board payments between June and November pursuant to DHS policy which mirrors 42 U.S.C.S. § 672(c)(1), which defines a foster family home as one "licensed by the State in which it is situated or has been approved by the agency of such State having responsibility for licensing homes of this type, as meeting the standards

established for such licensing.” [Ark. Dep’t of Human Servs. v. Southerland, 65 Ark. App. 97 \(1999\).](#)

The Arkansas Supreme Court upheld a juvenile judge’s award of specific services, funds for a mother’s medication and bus tokens or bus credits for mother and children to attend counseling sessions. [Ark. Dep’t. of Human Servs. v. Clark, 304 Ark. 403 \(1991\).](#)

The court affirmed the juvenile court’s finding DHS in contempt for failure to provide the services as ordered and imposition of a \$250 fine. [Ark. Dep’t of Human Servs. v. Clark, 305 Ark. 561 \(1991\).](#)

Requirements Prior to Removing a Juvenile from Home

Before a circuit court may order a juvenile to be removed from his or her parent, guardian, or custodian and placed with DHS or another licensed agency responsible for the care of a juvenile, relative, or other individual, the court shall order family services to prevent removal, unless the health and safety of the juvenile warrant immediate removal for the juvenile’s protection. [Ark. Code Ann. § 9-27-328\(a\).](#)

When the court orders such removal, the court shall make the following specific findings:

- (1) The initial order shall provide:
 - (A) Whether it is contrary to the welfare of the juvenile to remain at home;
 - (B) Whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
 - (C) Whether removal is in the best interest of the juvenile.
- (2) Within sixty (60) days of removal, the court must find:
 - (A) Which family services were made available to family prior to removal;
 - (B) What efforts were made to provide family services relevant to the needs of the family prior to removal, taking into consideration whether the juvenile could remain safely at home with services;
 - (C) Why efforts made to provide family services described did not prevent removal; and

- (D) Whether efforts made to prevent removal of juvenile were reasonable based upon the family's and juvenile's needs. Ark. Code Ann. § 9-27-328(b).

In a FINS case, the mom appealed a permanent custody order placing her child with the paternal grandparents. The court of appeals reversed the trial court and held that the findings required by Arkansas Code Annotated section 9-27-328(b) were not made and could not be supported by the record. [Robbins v. State, 80 Ark. App. 204 \(2002\)](#).

The department is deemed to have made reasonable efforts to prevent or eliminate the need for removal when its first contact with family occurred during an emergency in which the juvenile could not remain at home safely, even if reasonable services were provided. Ark. Code Ann. § 9-27-328(c).

DHS sought to challenge a judge's placement with the agency claiming she failed to comply with Arkansas Code Annotated section 9-27-328(a)(2) by not making specific findings of fact that family services were made available before the child was removed from the grandmother's home. The issue is moot because, at a later disposition hearing and prior to the agency filing a notice of appeal, the judge placed custody with the child's mother in another county. The court does not issue advisory opinions nor review matters when the complaining litigant received the relief it requested. [Ark. Dep't of Human Servs. v. State, 318 Ark. 294 \(1994\)](#).

Upon the court's finding that DHS's preventative and reunification efforts have not been reasonable, but further efforts could not permit juvenile to remain safely in home, the court may authorize or continue removal. Ark. Code Ann. § 9-27-328(d).

Custody can be transferred only after determining that reasonable efforts have been made by DHS to deliver family services designed to prevent the need for an out-of-home placement and that the need for an out-of-home placement exists. Ark. Code Ann. § 9-27-335(e)(1)(A).

In all instances of removal of a juvenile from the home of his or her parent, guardian, or custodian, the court shall set forth in a written order:

- (1) evidence supporting decision to remove;
- (2) facts regarding the need for removal; and
- (3) findings required by this section. Ark. Code Ann. § 9-27-328(e)(1).

The written findings and the order shall be filed by the court or a party or party's attorney as designated by the court within thirty (30) days of the date of the

hearing at which removal is ordered or prior to next hearing, whichever is sooner. Ark. Code Ann. § 9-27-328(e)(2).

The trial court's order of family services was not defective because it failed to make specific written findings. The statute requires specific findings only when the court orders removal from a custodial parent. [Ark. Dep't of Human Servs. v. R.P.](#), 333 Ark. 516 (1998).

Transfer Custody

If it is in the best interest of the juvenile, transfer custody to another licensed agency responsible for care of juveniles, to relatives, or to other individuals. Ark. Code Ann. § 9-27-332(a)(2)(A).

In all custody cases, the primary consideration is the welfare and best interest of the children involved; all other considerations are secondary; the chancellor must utilize to the fullest extent all powers of perception in evaluating witnesses, their testimony, and the best interest of the children; in no other kind of case does the superior position, ability, and opportunity of the chancellor to observe the parties carry as much weight as in those cases involving minor children; juvenile courts are a division of chancery, and therefore the same standards of review apply.

Where, among other things, the juvenile court credited a clinical psychologist's testimony that he did not believe that appellant had the ability to care for all three of her sons for an extended period of time, and the juvenile court determined that the evidence showed that the appellee fathers provided safe, nurturing environments and that they were the more stable custodians for the boys, the appellate court concluded that a review of the entire record demonstrated that the trial judge's refusal to restore custody to appellant was not clearly erroneous. [Lowell v. Lowell](#), 55 Ark. App. 211 (1996).

Custody may be transferred to a relative or other individual only after a home study is conducted by DHS or a licensed social worker and submitted to the court in writing, and the court determines that the placement is in the juvenile's best interest. Ark. Code Ann. § 9-27-333(f).

Transfer of custody to DHS (foster care) is limited to a finding that it is in the juvenile's best interest and because of acts or omissions by the parent, guardian, or custodian that removal is necessary to protect the juvenile's health and safety. Ark. Code Ann. § 9-27-332(a)(2)(B).

If the court transfers custody to DHS, the court shall issue orders regarding educational issues of the juvenile including:

- (1) determining if the parent or guardian shall have access to the juvenile's school records
- (2) determining if the parent or guardian who has access to school records is entitled to obtain information on the child's placement (name and address of foster parent or provider), and
- (3) determining if the parent or guardian may participate in school conferences or similar activities. Ark. Code Ann. § 9-28-113(6)(A).

If custody is transferred to DHS, the circuit court may appoint a person to consent to an initial evaluation and serve as a surrogate parent, pursuant to the Individuals with Disabilities Education Act (IDEA). Ark. Code Ann. § 9-28-113(6)(B).

If the court grants custody of a juvenile and any siblings or step-siblings to a relative or other person, the juvenile shall not:

- (1) be placed in the custody of DHS while remaining in the relative's home; and
- (2) the juvenile shall not be removed from the custody of the relative or other person, placed in the custody of DHS, and then remain or return to the home of the relative or other person while remaining in the custody of DHS. Ark. Code Ann. § 9-27-355(b)(4).

The court shall not specify a particular provider for placement of any foster child when DHS is the payor or provider. Ark. Code Ann. § 9-27-333(d).

The trial court was upheld in ordering DHS to pay the Brown School \$48,000. The trial court did not err because it ordered placement in a "residential treatment facility" and did not order a specific named placement facility. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary. [Ark. Dep't of Human Servs. v T.B., 347 Ark. 593 \(2002\).](#)

Custody of a juvenile shall not be transferred to DHS when a delinquency petition or case is converted to a FINS petition or case. Ark. Code Ann. § 9-27-333(g).

Prior to the court placing a juvenile in a residential placement, the court shall comply with the mental health assessments required by Act 1959 of 2005. Ark. Code Ann. §§ 9-27-601-603.

The court shall order parents or any other person named in the petition to pay a reasonable sum for support, maintenance, or education of juvenile to any person,

agency, or institution to whom custody is awarded if it appears that the parents or other person are required by law to support juvenile and able to contribute to support of the juvenile. Ark. Code Ann. § 9-27-346(a).

The court shall order such person to pay a reasonable sum pursuant to the Guidelines for Child Support and the Family Support Chart. Ark. Code Ann. § 9-27-346(a); [Administrative Order Number 10](#).

The court shall not order DHS to expend or forward social security benefits for which DHS is the payee. Ark. Code Ann. § 9-27-333(i).

Parent Training

The court may order the parent(s) or the guardian of the juvenile to attend a court-ordered parental responsibility training program, if available.

The court may make reasonable orders requiring proof of completion of such training program within a certain time period and payment of a fee covering the cost of the training program. Ark. Code Ann. § 9-27-332(a)(3).

The court may provide that any violation of such orders shall subject the parent, both parents, juvenile, custodian, or guardian to contempt sanctions of the court. Ark. Code Ann. § 9-27-332(9)(b).

Electronic Monitoring - Residential Detention

Place the juvenile on residential detention with electronic monitoring in the juvenile's home. Ark. Code Ann. § 9-27-332(a)(4).

Community Service

Order the juvenile, his or her parent(s), or guardian to perform court-approved volunteer community service.

Community service shall be designed to contribute to the rehabilitation of the juvenile or the ability of the parent or guardian to provide proper parental care and supervision of the juvenile.

Community service shall not exceed 160 hours. Ark. Code Ann. § 9-27-332(a)(5).

Supervision Terms

The supervision terms may include, but are not limited to:

- (1) requiring the juvenile to attend school or make satisfactory progress toward a general education development certificate;
- (2) requiring the juvenile to observe a curfew; and

- (3) prohibiting the juvenile from possessing or using any alcohol or illegal drugs.

Supervision terms shall be in writing.

Supervision terms shall be given to the juvenile and explained to him or her and to his or her parent, guardian, or custodian by the juvenile intake or probation officer in a conference immediately following the disposition hearing. Ark. Code Ann. § 9-27-332(a)(6).

Fine

Fine not to exceed five hundred dollars (\$500) to be paid by the juvenile, parent(s), guardian(s), or custodian(s) when said juvenile exceeds the number of unexcused absences provided for in the district's or the State Board of Career Education's student attendance policy.

The purpose of the penalty is to impress upon the parents, guardians, or persons in loco parentis the importance of school or adult education attendance, and the penalty is not to be used primarily as a source of revenue.

In all cases in which a fine is ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay for said fine, considering the following factors:

- (1) the financial ability of the parent, both parents, the guardian, or custodian to pay for such services;
- (2) the past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and
- (3) any other factors that the court deems relevant.

When practicable and appropriate, the court may utilize mandatory attendance to such programs as well as community service requirements in lieu of a fine.

Ark. Code Ann. § 9-27-332(a)(7).

Assess Court Cost

Not to exceed \$35.00 to be paid by the juvenile, his or her parent, both parents, guardian(s), or custodian(s). Ark. Code Ann. § 9-27-332(a)(8).

Order Juvenile Service Fee

Not to exceed \$20.00 a month to be paid by the juvenile, his or her parent(s), both parents, guardian(s), or custodian(s). Ark. Code Ann. § 9-27-332(a)(9).

Contempt Sanctions

The court may provide that any violation of its orders shall subject the parent, both parents, custodian, guardian, or the juvenile to contempt sanctions. Ark. Code Ann. § 9-27-332(b).

The court acted without jurisdiction to hold the appellant in contempt for failure to abide by a no-contact order after the appellant reached the age of 18 because the court lacked jurisdiction related to the original FINS petition. Although punishment for contempt is an inherent power of the court, it must be based on a valid court order of a court having jurisdiction. [Black v. State, 2010 Ark. App. 788](#).

In this FINS case, the juvenile was denied the right to counsel in a contempt proceeding. Arkansas Code Annotated section 9-27-316 makes it clear that in both delinquency and FINS cases a juvenile has a right to counsel and that an attorney ad litem may be appointed who represents the best interests of the juvenile, but that this is not intended to be the same person. Because the juvenile was denied counsel, the trial court exceeded its authority, and the order was thus invalid. The petitioner's writ of habeas corpus was granted. Since the writ of habeas is granted the writ of certiorari is moot. [Ark. Dep't of Human Servs. v. Mainard, 358 Ark. 204, 188 S.W.3d 901 \(2004\)](#).

No court may commit a juvenile found solely in criminal contempt to DYS. Ark. Code Ann. § 9-27-333(h); Ark. Code Ann. § 9-28-208(a)(2).

Six-Month Review Hearings

Purpose

To review a dependent-neglected or FINS case at least every six (6) months when a juvenile is placed out of his or her home until there is a permanent order of custody, guardianship, or other permanent placement or the juvenile is returned to his or her parent, guardian, or custodian and the court has not discontinued orders for family services. Ark. Code Ann. § 9-27-337(a)(1)(A)-(B).

To review the case and determine the future status based on the juvenile's best interest. Ark. Code Ann. § 9-27-337(e)(1)(A).

Time Constraints

The review hearing shall be held within six (6) months after the original out-of-home placement and every six (6) months thereafter until permanency is achieved. Ark. Code Ann. § 9-27-337(a)(2).

The court may require review prior to six-month review date, and the court shall announce the date, time, and place of the hearing. Ark. Code Ann. § 9-27-337(b).

Any party may request the court to review the case at any time in which an out-of-home placement has occurred, and the party requesting the hearing shall provide reasonable notice to all parties. Ark. Code Ann. § 9-27-337(c).

A written order shall be filed and distributed by the court or by a party or party's attorney to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-337(e)(2).

Court Review Findings

The court shall determine and include in its order whether:

- (1) The case plan, services and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;
- (2) The state has made reasonable efforts to provide family services;
- (3) The case plan is moving towards an appropriate permanency plan pursuant to Arkansas Code Annotated section 9-27-338; and
- (4) The visitation plan is appropriate for the children and parents and siblings, if separated. Ark. Code Ann. § 9-27-337(e)(1)(B)(i).

The court's determination must be based on a full and deliberate consideration of the following:

- (1) The extent of compliance with the case plan including, but not limited to, a review of DHS's care for the health, safety, and education of the juvenile while in an out-of-home placement;
- (2) The extent of progress that has been made toward alleviating or mitigating the causes of the out-of-home placement;

- (3) Whether the juvenile should be returned to the parent(s) and whether the juvenile's health and safety can be protected by the parent(s) if returned home;
- (4) Whether there is an appropriate permanency plan for the juvenile, pursuant to Arkansas Code Annotated section 9-27-338, including concurrent planning. Ark. Code Ann. § 9-27-337(e)(1)(C).

XVI. DEPENDENCY-NEGLECT PROCEEDINGS

Probable Cause Hearings

Purpose

To determine if probable cause to issue an emergency ex parte order continues to exist. Ark. Code Ann. § 9-27-315(a)(1)(A).

Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists to believe that immediate emergency custody is necessary to:

- (1) Protect the juvenile's health or physical well-being from immediate danger; or
- (2) Prevent juvenile's removal from state. Ark. Code Ann. § 9-27-314(a)(1).

Court shall issue an ex parte order to provide specific appropriate safeguards to protect the juvenile when there is probable cause to believe an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger. Ark. Code Ann. § 9-27-314(a)(2)(A).

Specific appropriate safeguards shall include without limitation the court's ability to restrict a legal custodian's right to:

- (1) having contact with the juvenile; or
- (2) removing the juvenile from a placement if the legal custodian placed or allowed the child to remain in that home for more than six (6) months, and DHS has no immediate health or physical well-being concerns with the placement. Ark. Code Ann. § 9-27-314(a)(2)(B).

When there is probable cause to believe that a juvenile is a dependent juvenile, the court shall issue an ex parte order for emergency custody to DHS. Ark. Code Ann. § 9-27-314(a)(3).

Dependent juvenile means:

- a child of a parent in DHS custody;
- a child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child; however if the reason for incarceration is related to the health and safety of the child, the child is not dependent;

- a child whose parent or guardian is incapacitated so they cannot care for the juvenile, and they have no appropriate relative or friend to care for the child;
- a child whose custodial parent dies and no appropriate relative or friend is able to care for the child;
- a child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- a safe-haven baby; or
- a child who has disrupted his or her adoption and the adoptive parents have exhausted resources available to them; or
- a child who has been a victim of human trafficking as a result of threats, coercion, or fraud. Ark. Code Ann. § 9-27-303(17).

Notice

The emergency ex parte order shall include notice to all defendants and respondents named in the petition of the right to:

- (1) A hearing and that a hearing will be held within five (5) business days of issuance of ex parte order;
- (2) Representation by counsel; and
- (3) To obtain appointed counsel, if eligible, and procedure for obtaining appointed counsel. Ark. Code Ann. § 9-27-314(b)(1)-(3).

The court may appoint counsel for the parent or custodian from whom custody was removed in the emergency ex parte order. Ark. Code Ann. § 9-27-314(b)(3)(B).

It is best practice is to appoint counsel for the parent or custodian when a child is first removed so they can appear at the Probable Cause Hearing.

If the court appoints counsel in the emergency ex parte order, the court shall determine eligibility at the probable cause hearing. Ark. Code Ann. § 9-27-314(b)(3)(B).

Appointment of the attorney ad litem for the child and date and time of the probable cause hearing. Ark. Code Ann. § 9-27-316(f)(1).

Address and telephone number of court. Ark. Code Ann. § 9-27-314(b)(4).

Immediate notice of the emergency order shall be given to juvenile's parents, guardians, or custodian and the juvenile by the petitioner or court. Ark. Code Ann. § 9-27-314(c)(1).

All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by court. Ark. Code Ann. § 9-27-314(c)(2).

Time Constraints

Court shall conduct a probable cause hearing within five (5) business days of issuance of the emergency ex parte order. Ark. Code Ann. § 9-27-315(a)(1)(A); Ark. Code Ann. § 9-27-314(b)(1).

A written order shall be filed by the court or by a party or party's attorney, as designated by the court, within thirty (30) days of the date of the probable cause hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-315(d)(3).

The court shall set the date and time for the adjudication hearing at the probable cause hearing. The adjudication hearing shall be held within thirty (30) days of the probable cause hearing and may be continued for up to sixty (60) days after the probable cause hearing for good cause shown. Ark. Code Ann. § 9-27-315(d); Ark. Code Ann. § 9-27-327(a)(2).

DHS filed a petition for dependency-neglect under the provisions of A.C.A. § 9-27-310, not an emergency ex parte petition under A.C.A. §9-27-31. Rule 12(a)(1) of the Arkansas Rules of Civil Procedure allows a resident defendant twenty days in which to file an answer to a complaint. Both this court and the Supreme Court have held that a circuit court cannot reduce the time for filing an answer to a complaint and that a trial court errs by conducting a trial before the time for filing an answer has expired. The circuit court's concern for the child is understandable, but the court erred by hearing the petition prior to the expiration of twenty days.

Reversed and remand for proceedings consistent with this opinion.
[Hudgens v. Arkansas Dept. of Human Servs. 2010 Ark. App. 649.](#)

Hearing Limitations

The hearing shall be limited to determining whether probable cause existed to protect the juvenile and whether probable cause warrants continued protection. Ark. Code Ann. § 9-27-315(a)(1)(B)(i).

All other issues, with the exception of custody and services, shall be reserved by the court until the adjudication hearing. Ark. Code Ann. § 9-27-315(a)(2)(A).

All probable cause hearings are miscellaneous hearings, and the Arkansas Rules of Evidence do not apply. Ark. Code Ann. § 9-27-315(e); Ark. R. Evid. 1101(b)(3).

Burden of Proof

Petitioner has burden of proof by a preponderance of the evidence that probable cause exists for continuation of the emergency order. Ark. Code Ann. § 9-27-315(b).

Court Findings

The court shall order that probable cause continues to exist and the juvenile cannot return safely home, or it shall order the juvenile to return home pending adjudication if it determines that the juvenile can safely return and it is in the juvenile's best interest. Ark. Code Ann. § 9-27-315(a)(1)(B); Ark. Code Ann. § 9-27-315(c).

Circuit court affirmed for placing the custody of a child with his paternal grandparents who lived in another state at the probable-cause hearing and for closing the case.

At the probable cause hearing, both parents and the maternal and paternal grandmother testified they all lived in Sallisaw, Oklahoma. They also testified that the child had lived with the paternal grandparents since April 2005, and they all wanted custody to remain with the paternal grandparents. The paternal grandmother testified that the child was covered on their health insurance policy. Evidence also included an approved home study from a licensed social worker for the Arkansas case without objection, a background check, testimony that the grandparents had provided excellent care for the child, and several letters from community members stating that the paternal grandparents were qualified and financially able to care for the child.

The circuit court found that probable cause existed at the time of removal; the father was the legal father; an approved home study was performed and custody should be placed with the grandparents. Since no further services were found to be necessary, the court closed the case.

DHS argued that the court could not close the case prior to adjudication. The court held that the statute does not require the court to hold adjudication. Arkansas Code Annotated section 9-27-315(a)(1)(B) specifically provides that the courts may enter orders as to issues to custody and delivery of services at probable-cause hearings. [Ark. Dep't of Human Servs. v. Jones., 97 Ark. App. 267 \(2007\)](#).

Emergency hearing orders are not final and appealable orders. [Taylor v. Ark. Dep't of Human Servs., 2010 Ark. App. 725](#); [Johnston v. Ark. Dep't of Human Servs., 55 Ark. App. 392 \(1996\)](#); [Dover v. Ark. Dep't of Human Servs., 62 Ark. App. 37 \(1998\)](#).

Federal IV-E Adoption Safe Families Act (ASFA) Initial Removal Finding

In the initial order of removal, the court shall make specific findings:

- (1) Whether it is contrary to the welfare of the juvenile to remain at home;
- (2) Whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
- (3) Whether removal is in the best interest of the juvenile. [Ark. Code Ann. § 9-27-328\(b\)\(1\)](#).
- (4) When the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services provided, the agency shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal. [Ark. Code Ann. § 9-27-328\(c\)](#).

Dependency-Neglect Adjudication Hearings

Purpose

To determine whether the allegations in petition are substantiated by proof. [Ark. Code Ann. § 9-27-327\(a\)](#).

Dependent – Appropriate Relative

Dependency adjudication reversed where parent was arrested, and there were appropriate relatives to care for the child. Arkansas Code Annotated section 9-27-303(17)(B) provides that a child is dependent when a parent is incarcerated and there is no appropriate relative or friend to care for the child. In this case, when the father was arrested, his father and an aunt and uncle were available to take custody of his child. Parent counsel also presented evidence at the adjudication that DCFS had reviewed their respective homes and found them appropriate. No evidence was presented at the hearing that the relatives were inappropriate to care for the child. [Moiser v. Ark. Dep't of Human Servs., 95 Ark. App. 32 \(2006\)](#).

Neglect

Appellants seven other children were placed in DHS custody as a result of neglect prior to the birth of S.D. Abuse or neglect of one sibling can establish that another sibling is at serious risk of serious harm even when that other sibling has

not actually been abused or neglected. Adjudication upheld based on conclusive finding that S.D's older siblings were dependent-neglected and there was additional evidence of the S.D's current medical needs, including particular feeding and medication requirements. [Hernandez v. Ark. Dep't of Human Servs., 2013 Ark. App. 424.](#)

The trial court was affirmed in finding appellant's child dependent-neglected as a result of medical neglect and lack of supervision. A doctor admitted E.C. when he was two months old due to vomiting, weight loss, a head injury and other possible injuries. The trial court relied on Dr. Farst's testimony that the injuries were the result of high-force trauma and that the caregivers should have known what caused the injuries. The doctor also testified that since appellants were the only care givers they were not adequately supervising their infant who suffered multiple injuries, including multiple rib fractures, a skull fracture, bruises, and retinal hemorrhaging. [Churchill v. Ark. Dep't of Human Servs., 2012 Ark. App. 530.](#)

The trial court was affirmed in finding the children neglected by placing them at substantial risk of harm. Appellant's children were in her care when she was arrested and tested positive for methamphetamine. Appellant's drug use exposed her to criminal liability which would affect her children's well-being if she were incarcerated and her ability to care for her children due to the influence of the drugs. [Gaer v. Ark. Dep't of Human Servs., 2012 Ark. App. 516.](#)

Appellant argued that the trial court erred in removing his son from his home as a result of a finding of dependency-neglect. DHS removed appellant's five year old son, I.S., due to the mental abuse the child was enduring over the appellant's coaching and telling him that he had been abused as result of him making numerous unfounded reports on I.S.'s mother and stepfather. The trial court found that I.S. was dependent-neglected as a result of abuse and neglect by appellant and appellant's father. The court also found that appellant failed to protect I.S. from abuse by appellant's father and to provide a home free of emotional trauma and providing for his son's emotional needs. The court's findings that the inappropriate interviews with the child were emotionally traumatizing were supported by the testimony of the investigators, a therapist and confirmed by a video submitted by the appellant. [Stoliker v. Ark. Dep't of Human Servs., 2012 Ark. App. 415.](#)

The trial court's finding that appellant's sixteen-year-old daughter was dependent-neglected as a result of inadequate supervision was upheld. Evidence revealed that appellant had no knowledge of her daughter's criminal charges or pending case. As a result, the daughter attended the hearing alone. A background check revealed that the daughter was a runaway from Illinois and appellant did

not know if she was attending school, due to her work schedule. [Lowe v. Ark. Dep't of Human Servs., 2012 Ark. App. 155.](#)

The trial court was affirmed in finding appellant's child dependent-neglected as a result of appellant's neglect and general unfitness. Neglect does not require actual harm, but substantial risk in terms of future harm. The trial court noted the child's interview that an incident did occur in part due to lack of protection by the appellant, appellant's prior history, and the court's concern with appellant's lack of stability. Appellant failure to challenge the court's judicial notice of two prior dependency-neglect cases prevents review on appeal. [Weatherspoon v. Ark. Dep't of Human Servs., 2012 Ark. App. 34.](#)

Appellant argued that there was insufficient evidence to support the adjudication based on her drug use. Appellant's child was placed into DHS custody because when she was born she tested positive for drugs. Appellant was placed on probation, continued to test positive for methamphetamine, and during a visit the infant was inappropriately dressed and in a soaking diaper. The court did not err where it considered appellant's drug use could constitute parental unfitness or neglect of a newborn. This court has held that the definition of neglect does not require proof of actual harm. Substantial risk can be viewed in terms of future harm. Drug use can affect the ability to care for a child by exposing a parent to criminal liability, if incarcerated, and impairing a parent's ability to care for a child while under the influence. *Maynard v. Arkansas Department of Human Services, 2011 Ark. App. 82.* *The trial court also found that there were environmental concerns and appellant appeared unable to care for her child.* [Ward v. Ark. Dep't of Human Servs., 2011 Ark. App. 550.](#)

The appellate court found that record supported the trial court's findings that the children were at substantial risk of neglect and parental unfitness. Appellants had no home, were living in a tent and using drugs while relatives cared for the children. There was also evidence that they transported the children while under the influence of drugs. [Chambers v. Ark. Dep't of Human Servs., 2011 Ark. App. 91.](#)

Appellant argued there was insufficient evidence to support the trial court's finding that her child was neglected. Evidence was sufficient that included drug use and irregular income to support her child. [Maynard v. Ark. Dep't of Human Servs., 2011 Ark. App. 82.](#)

Appellant challenged the sufficiency of the evidence and argued that the trial court erred in placing more weight with a doctor's testimony than that of the social worker. Due deference is given to the judge to determine witness credibility. There were also undisputed facts to support the court's finding, including

appellant's meth abuse and instability. [McCann v. Ark. Dep't of Human Servs., 2010 Ark. App. 827.](#)

Appellant challenged the sufficiency of the evidence of the dependency-neglect adjudication based on educational neglect, physical abuse by the father, and failure to protect by the mother. The trial court credited the juvenile's testimony, which was more than sufficient to support the finding of physical abuse. The court's finding of neglect due to the mother's failure to protect was affirmed because she rejected the investigator's offer to take the juvenile to a safe place until the situation calmed down and the father could be interviewed. [Worrell v. Ark. Dep't of Human Servs., 2010 Ark. App. 671.](#)

Appellant challenged the sufficiency of the evidence to support the trial court's finding that her son was dependent-neglected based on parental unfitness, neglect, and abuse. The court specifically found that appellant subjected the child to Pediatric Condition Falsification, Munchausen syndrome by proxy, as confirmed by medical personnel. The appellate court noted that while there was counter evidence, it deferred to the trial court to observe parties and judge witness credibility. [Parker v. Ark. Dep't of Human Servs., 2010 Ark. 424.](#)

Circuit court affirmed in finding that appellant neglected his child by failing to take reasonable actions to protect her when he knew or should have known about the bad conditions of the home of the relatives where he left her. The evidence was overwhelming that her living conditions were deplorable including; the home had no heat, water, or food. The child was hungry, dirty, and in serious need of dental and medical care. [Howell v. Ark. Dep't of Human Servs., 2009 Ark. App. 612.](#)

The Arkansas Supreme Court held there was sufficient evidence for the trial court to find that appellant failed to provide for the essential and necessary mental and emotional needs of his children. There was also sufficient evidence to finding that this behavior constituted abuse as it caused direct injury to D.P.'s emotional and psychological development.

The parents' consent for D.P. to marry a stranger from the internet posed a threat to all children under their supervision. The court found that "this easily qualifies as evidence of appellant's failure to properly supervise D.P., which resulted in her being left alone in inappropriate circumstances, creating a dangerous situation." [Porter v. Ark. Dep't of Human Servs., 374 Ark. 177 \(2008\).](#)

Neglect is defined as an act or omission by a parent that constitutes the failure or irremediable inability to provide for the essential and necessary physical, mental or emotional needs of a juvenile. At the adjudication hearing, the court was presented with conflicting testimony concerning appellant's ability to provide for

her child. The chancellor's findings of fact will be reviewed de novo and will not be set aside unless they are clearly erroneous, giving due regard to the trial court's opportunity to judge the credibility of witnesses. [Johnston v. Ark. Dep't of Human Servs.](#), 55 Ark. App. 392 (1996).

Neglect – Parental Unfitness

The Arkansas Court of Appeals dismissed as moot appellant's appeal of her dependency-neglect adjudication based on parental unfitness because her child was returned to her custody. Despite briefs requesting review by DHS and appellant, the court stated that the case was moot because there was no practical legal effect on an existing legal controversy. [Richardson v. Ark. Dep't of Human Servs.](#), 86 Ark. App. 142 (2004).

A dependent-neglected child is one who is at risk of serious harm from an unfit parent and such unfitness is not necessarily predicated upon the parent actually causing some direct injury to the child in question. Further, the juvenile court is a court of competent jurisdiction to determine that a parent committed a serious felony assault that results in serious bodily injury. [Brewer v. Ark. Dep't of Human Servs.](#), 71 Ark. App. 364 (2000) (substituted opinion on grant of rehearing delivered April 25, 2001).

Physical Abuse

The circuit court adjudicated appellants' two children dependent-neglected because of corporal punishment that left bruising on one of the child's buttocks and left thigh. Appellants argued that the circuit court erred by allowing a forensic interviewer to testify about her opinion of child's credibility during her interview with the child. The court of appeals held that appellant failed to demonstrate prejudice from any alleged error. The circuit court also acknowledged the possibility of erring in allowing the testimony of the witness, it expressly stated that it based its determination of child's credibility solely on the child's testimony. [McKay v. Ark. Dep't of Human Servs.](#), 2014 Ark. App. 95.

Appellant's five-year-old son reported that his mother hit him on top of his head with a belt which resulted in her being arrested and charged with second-degree battery. Appellant was called as a witness, but her attorney explained that he had advised her not to testify due to her pending felony charges. Appellant argued that the evidence was insufficient to support a finding of dependency-neglect and that the trial court erred in inferring abuse in part on appellant's refusal to testify based on Fifth Amendment grounds. The DHS attorney argued that appellant's invocation of her Fifth Amendment right justified an inference that she was guilty of the alleged abuse and appellant's attorney failed to object. The trial court adjudicated based on the medical photographs, the fact that appellant

changed her story regarding the injury, and that appellant refused to testify. Appellant's attorney made no objection that the court drew an inference of guilt based on invoking her Fifth Amendment right. As such, this issue is not preserved for appeal. [Bowie v. Ark. Dep't of Human Servs., 2013 Ark. App. 279.](#)

Appellant argued there was insufficient evidence to support the trial court's finding that the children were dependent-neglected based on physical abuse and melatonin misuse. The Court of Appeals reversed and dismissed. DHS failed to provide sufficient proof concerning the spankings. DHS did not provide evidence as to why or how the spankings were administered, nor was there any evidence that the children were injured. There was also no evidence that the spankings were anything other than moderate or reasonable resulting in transient pain. As to the melatonin, there was no evidence identifying it, its uses, dosage, and side effects. As a result, the appellate court found that the trial court had no basis for finding it harmful to children. [Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 244.](#)

There was sufficient evidence to support the trial court's finding that the children were dependent-neglected, specifically that appellant subjected V.L. to physical abuse by interfering with her breathing when appellant grabbed her by the neck and choked her and that he subjected J.L. to emotional abuse by making J.L. hold V.L. down while appellant choked V.L.. Appellant's insufficiency claim goes to the credibility of the children's allegations and is within the court's discretion. [Lynch v. Ark. Dep't of Human Servs., 2012 Ark. App. 149.](#)

Appellant challenged the sufficiency of the evidence to support the trial court's finding that her son was dependent-neglected based on parental unfitness, neglect, and abuse. The court specifically found that appellant subjected the child to Pediatric Condition Falsification, Munchausen syndrome by proxy, as confirmed by medical personnel. The appellate court noted that while there was counter evidence, it deferred to the trial court to observe parties and judge witness credibility. [Parker v. Ark. Dep't of Human Servs., 2010 Ark. 424.](#)

Appellant challenged the sufficiency of the evidence of the dependency-neglect adjudication based on educational neglect, physical abuse by the father, and failure to protect by the mother. Appellants argued that the juvenile's testimony was not completely credible. However, the trial court credited the juvenile's testimony, which was more than sufficient to support the finding of physical abuse. [Worrell v. Ark. Dep't of Human Servs., 2010 Ark. App. 671.](#)

The court of appeals affirmed the circuit court's finding appellant's adopted child dependent-neglected for returning him to his home. Appellants adopted their grandson whose dependency-neglect case included findings that he suffered life-

threatening abused that resulted in permanent brain damage. [S.F. v. Ark. Dep't of Human Servs., 101 Ark. App. 236 \(2008\).](#)

There was sufficient evidence to find the child dependent-neglected where there was evidence that the injury was not consistent with the explanation given. In addition, there was evidence that the appellant sent her seven-year-old son unsupervised into a bathroom to bathe without determining the temperature of water, resulting in the child suffering second-degree burns. [Hopkins v. Ark. Dep't of Human Servs., 79 Ark. App. 1 \(2002\).](#)

Sex Abuse

The circuit court found appellant's children were dependent-neglected based on appellant's failure to protect them following the sexual abuse of appellant's child, M.V., by appellant's husband, an illegal immigrant who returned to his country following the sexual assault. Appellant argued that she was not a safety risk to her children and that the circuit court's order contained certain errors. The court of appeals affirmed where the evidence showed appellant knew of the sexual abuse and made attempts to reconcile with her husband. Appellant also encouraged M.V. to maintain a relationship with her husband. [Wear v. Ark. Dep't of Human Servs., 2013 Ark. App. 702.](#)

There was substantial evidence to support the trial court's finding that the juvenile was dependent-neglected based on sexual abuse by her brothers. The juvenile victim's statements were at issue and the court found her credible. [Berthelot v. Ark. Dep't of Human Servs., 2012 Ark. App. 249.](#)

Appellant argued that the court erred in finding that his daughter was dependent-neglect due to sexual abuse by him. He argued that DHS failed to prove his daughter's allegations by a preponderance of the evidence. The trial court found the testimonies of the daughter and the nurse who examined her to be credible and consistent with each other. The trial court's finding was not clearly erroneous. [Wells v. Ark. Dep't of Human Servs., 2012 Ark. App. 176.](#)

The circuit court did not abuse its discretion in denying appellant's motion to vacate and motion for a new trial based on newly discovered evidence that appellant's daughter recanted and had been forced to lie about the sexual abuse. Newly discovered evidence is the least favored ground to justify a new trial. The trial court did not find the hearsay evidence credible and found that it would not impact the outcome of the case. [Austin v. Ark. Dep't of Human Servs., 2011 Ark. App. 581.](#)

Dependency adjudication dismissal affirmed because DHS failed to meet its burden of proof. DHS failed to call any witness or present any evidence and rested solely on its pleadings that the father was a convicted sex offender and that

the mother failed to properly supervise the children by allowing unsupervised custody. The appellant testified that she believed her children were safe and that she had complied with the safety plan in order to keep her children. A caseworker testified that appellants were complying with the safety plan and that she believed that the mother would protect the children. [Ark. Dep't of Human Servs. v. Mitchell, 100 Ark. App. 45 \(2007\).](#)

The court of appeals affirmed the circuit court's finding that appellant's child was dependent-neglected based upon sexual abuse by the appellant. [Sparrow v. Ark. Dep't of Human Servs., 101 Ark. App. 193 \(2008\).](#)

Siblings

The trial court was affirmed in finding appellant's child neglected as a result of the abuse of appellant's other child in the same case. It is the risk of harm that is created by the sibling's abuse that makes a finding of dependency-neglect as to other sibling appropriate. The court conducted a full hearing and reviewed the medial evidence including at three months of age fractured ribs and at nine months a spiral fracture to the left tibia, multiple corner fractures of the distal femur and tibia and multiple rib fractures. [Eason v. Ark. Dep't of Human Servs., 2012 Ark. App. 507.](#)

The trial court was affirmed in finding appellant's child dependent-neglected as a result of a sibling death while in appellant's care. [Payne v. Ark. Dep't of Human Servs., 2012 Ark. App. 500.](#)

The trial court was reversed for failure to adjudicate the siblings of a child who was found dependent-neglected. Evidence included a severe whipping, pouring salt into the wounds, keeping the child in the same pair of underwear for two days while bleeding and oozing caused his underwear to stick to his rear, and failure to seek medical care. The child abuse of one child demonstrated parental unfitness that put the other siblings at substantial risk of harm. [Ark. Dep't of Human Servs. v. McDonald, 80 Ark. App. 104 \(2002\).](#)

Second Adjudication – Same Issue

Appellant's children had been adjudicated dependent-neglected and subsequently returned to the custody of the mother. Some months later DHS filed a motion for ex parte emergency change of custody and the children were taken back into DHS custody. The court affirmed the trial court's ruling that it was unnecessary to hold a second adjudication hearing at this point because the children were already adjudicated dependent-neglected. [Walters v. Ark. Dep't of Human Servs., 77 Ark. App 191 \(2002\).](#)

Time Constraints

A dependency-neglect adjudication hearing shall be held within thirty (30) days of the probable cause hearing, but upon a motion of the court or parties for good cause shown, it may be continued for no more than sixty (60) days after the probable cause hearing for good cause shown. Ark. Code Ann. § 9-27-327(a)(2)(A).

DHS filed a petition for dependency-neglect under the provisions of A.C.A. § 9-27-310, not an emergency ex parte petition under A.C.A. §9-27-31. Rule 12(a)(1) of the Arkansas Rules of Civil Procedure allows a resident defendant twenty days in which to file an answer to a complaint. Both this court and the Supreme Court have held that a circuit court cannot reduce the time for filing an answer to a complaint and that a trial court errs by conducting a trial before the time for filing an answer has expired. The circuit court's concern for the child is understandable, but the court erred by hearing the petition prior to the expiration of twenty days. Reversed and remand for proceedings consistent with this opinion. [Hudgens v. Arkansas Dept. of Human Servs. 2010 Ark. App. 649.](#)

*Infant was found dependent-neglected as a result of multiple broken bones of varying ages. At the time of the adjudication, all bone tests were normal, but one test on brittle bone disease was not completed in time for the adjudication hearing. On March 24, 2004, the date set for the adjudication hearing, appellant's attorney objected and requested a continuance, claiming that the statute mandating that the adjudication hearing be held within sixty (60) days of the probable-cause hearing was unconstitutional and violated his client's procedural and due-process rights because the definitive test on brittle bone disease had not yet been completed. In *Hathcock v. Arkansas Department of Human Services*, 347 Ark. 819, 69 S.W.3d 6 (2002), the supreme court ruled that time constraints in the juvenile code controlled instead of those in the Arkansas Rules of Civil Procedure because the juvenile code serves the specific purpose of expediting hearings involving children in out-of-home placements. [Neves da Rocha v. Ark. Dep't of Human Servs., 93 Ark. App. 386 \(2005\).](#)*

Appellant argued that the trial court erred in denying his motion for a continuance because he was subject to a criminal proceeding. As a result, he would exercise his 5th Amendment rights and not be able to testify at the adjudication hearing. The trial court denied the continuance based on the statutory requirement at Arkansas Code Annotated section 9-27-315(d)(2) that requires an adjudication hearing to be held within thirty

(30) days of an emergency hearing and that it may not be continued for more than twenty (20) days.

The court held Arkansas Code Annotated section 9-27-315(d)(2) controls because it expedites hearings involving children in out-of-home placements and serves a specific purpose not in conflict with Rule 40(b). The Constitution does not require a stay of civil proceedings pending the outcome of criminal proceedings, but a court has discretion to stay civil proceedings where the intent of justice requires a stay. Delays in D-N proceedings would run counter to the public interest of protecting children and providing them permanency. [Hathcock v. Ark. Dep't of Human Servs.](#), 347 Ark. 819 (2002).

Note: Statutory changes made since *Hathcock*, yet no effect on the court's holding. The time frame has been extended for a continuance for no more thirty (30) days (added 10 days) and the statutory citation has changed.

In dependency-neglect cases, a written adjudication order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. [Ark. Code Ann. § 9-27-327\(f\)](#).

Burden of Proof

Preponderance of the evidence. [Ark. Code Ann. § 9-27-325\(h\)\(2\)\(B\)](#).

Evidence

The Rules of Evidence apply, unless excluded. [Ark. Code Ann. § 9-27-325\(e\)\(1\)](#).

Appellants argued that the circuit court erred by allowing a forensic interviewer to testify about her opinion of child's credibility during her interview with the child. The court of appeals held that appellant failed to demonstrate prejudice from any alleged error. The circuit court also acknowledged the possibility of erring in allowing the testimony of the witness; it expressly stated that it based its determination of child's credibility solely on the child's testimony. [McKay v. Ark. Dep't of Human Servs.](#), 2014 Ark. App. 95.

Appellant argued that the circuit court erred in not permitting her expert to testify regarding her child's alienation of affection. The trial court exercised its discretion and did so based on the fact that the expert had not interviewed the child or appellees. [Young v. Sexton](#), 2012 Ark. 334.

Appellant argued that the court erred in admitting an investigator's report that contained supporting documentation with hearsay. The court of appeals agreed the documentation should not have been admitted. However, appellant failed to show prejudice because the trial court ruled that the supporting documentation was not admissible and did not consider it, even though it was erroneously included in the admitted report. [Berthelot v. Ark. Dep't of Human Servs., 2012 Ark. App. 249.](#)

Appellant also argued that the trial court erred in preventing evidence that the children's mother had a motive to have the children fabricate the allegations to put her in a better position in their divorce proceedings. Admissibility of evidence is left to the sound discretion of the trial court and will not be reversed absent the court's abuse of discretion. [Lynch v. Ark. Dep't of Human Servs., 2012 Ark. App. 149.](#)

The circuit court did not abuse its discretion in denying appellant's motion to vacate and motion for a new trial based on newly discovered evidence that appellant's daughter recanted and had been forced to lie about the sexual abuse. Newly discovered evidence is the least favored ground to justify a new trial. The trial court did not find the hearsay evidence credible and found that it would not impact the outcome of the case. [Austin v. Ark. Dep't of Human Servs., 2011 Ark. App. 581.](#)

The Hospital Records Act is an exception to the hearsay rule, and the trial court did not abuse discretion in admitting it. While other objections may have sufficed to exclude certain portions of the medical records, such objections were not made.

The appellant argued that the trial court erred in allowing the doctor to give her medical opinion without being qualified as an expert witness at the adjudication hearing. If scientific, technical or other specialized knowledge would will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness may testify thereto in the form of an opinion or otherwise. Ark. R. Evid. 702 (2002). The "rational connection" test of Rule 701 requires that the opinion or inference is one that a normal person would form on the basis of the observed facts. The trial court did not abuse its discretion in permitting the treating physician to testify without first being qualified as an expert witness. The physician's opinion that someone would have more extensive burns if they fell into a bathtub of scalding water is an opinion that a normal person could form on the basis of the observed facts. The trial court did not abuse its discretion in permitting the doctor to provide opinion testimony regarding "friction burns" because she had knowledge of the treatment and diagnosis of burns

from her medical training. [Hopkins v. Ark. Dep't of Human Servs., 79 Ark. App. 1 \(2002\).](#)

Hearing Limitations

In medical-neglect cases involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

- (1) Preventing or remedying serious harm to the child; or
- (2) Preventing the withholding of medically indicated treatment from the child with a life-threatening condition. [Ark. Code Ann. § 9-27-335\(f\).](#)

Studies & Reports

Court may order any studies, evaluations, or predisposition reports, if needed, that bear on the disposition, following adjudication. [Ark. Code Ann. § 9-27-327\(d\).](#)

Reports shall be written and shall be provided to all parties and counsel at least two (2) days prior to disposition hearing. [Ark. Code Ann. § 9-27-327\(e\)\(1\).](#)

All parties shall be given a fair opportunity to controvert any part of reports. [Ark. Code Ann. § 9-27-327\(e\)\(2\).](#)

Dependency-Neglect Disposition Hearings

Purpose

To determine what action will be taken following adjudication and to enter orders consistent with the disposition alternatives. [Ark. Code Ann. § 9-27-329\(a\).](#)

The court shall consider the disposition alternatives with preference to the least restrictive disposition consistent with best interest and welfare of the juvenile and the public. [Ark. Code Ann. § 9-27-329\(d\).](#)

Time Constraints

The disposition hearing may be held immediately following or concurrent with the adjudication hearing but in any event shall be held no more than fourteen (14) days following the adjudication hearing. [Ark. Code Ann. § 9-27-329\(c\).](#)

A written disposition order shall be filed by the court, or by a party or a party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. [Ark. Code Ann. § 9-27-329\(e\).](#)

Evidence

The Rules of Evidence apply, unless otherwise indicated. Ark. Code Ann. § 9-27-325(e)(1).

The court may admit into evidence any victim impact statements and studies or reports that have been ordered, even if not admissible at the adjudication hearing. Ark. Code Ann. § 9-27-329(f).

Required Reasonable Efforts - Adoption Safe Families Act (ASFA) - 60 Day

Findings

Within sixty (60) days of removal, the court shall make specific findings:

- (1) Which family services were made available to family before removal of the juvenile;
- (2) What efforts were made to provide family services relevant to the needs of the family prior to removal, taking into consideration whether or not the juvenile could remain safely at home while family services were provided;
- (3) Why efforts made to provide family services described did not prevent removal; and
- (4) Whether efforts made to prevent removal of juvenile were reasonable, based upon the family and juvenile's needs. Ark. Code Ann. § 9-27-328(b)(2).

The responsible state agency is deemed to have made reasonable efforts to prevent or eliminate the need for removal when its first contact with family occurred during an emergency in which the juvenile could not remain at home safely, even if reasonable services were provided. Ark. Code Ann. § 9-27-328(c).

Dependency-Neglect Disposition Alternatives

If the juvenile is found dependent-neglected, the circuit court may enter any of the following dispositions:

Family Services - Ark. Code Ann. § 9-27-334(a)(1).

Family services means relevant services provided to a juvenile or his or her family, including but not limited to:

- (1) Child care,
- (2) Homemaker services,
- (3) Crisis counseling,

- (4) Cash assistance,

Cash assistance does not include long-term financial assistance that is the equivalent of a board payment, adoption subsidy, guardian subsidy, or financial assistance for car insurance. Ark. Code Ann. § 9-27-303(10)(B).

- (5) Transportation,

- (6) Family therapy,

- (7) Physical, psychiatric, or psychological evaluation,

- (8) Counseling, or

- (9) Treatment. Ark. Code Ann. § 9-27-303(25)(A).

Prior to the court placing a juvenile in a residential placement, the court shall comply with the mental health assessments required by Act 1959 of 2005. Ark. Code Ann. §§ 9-27-601– 603.

The trial court was upheld in ordering DHS to pay the Brown School \$48,000. The trial court did not err because it ordered placement in a “residential treatment facility” and did not order a specific named placement facility. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary. [Ark. Dep’t of Human Servs. v T.B., 347 Ark. 593 \(2002\)](#).

The court ordered DHS to provide adequate housing, including electric and water utilities, and held DHS and Sandi Doherty in willful contempt for failing to abide by its order. DHS argued that the trial court lacked the statutory authority to order family services. Arkansas Code Annotated section 9-27-307(17) defines family services as relevant services, including ... cash assistance ... to prevent a juvenile from being removed from a parent The trial court did not exceed the statutory criteria for family services. At the September 30 hearing, the court unequivocally stated that it was ordering services to prevent R.P. from being removed from her mother.

The trial court’s order of family services was not defective because it failed to make specific written findings. Arkansas Code Annotated section 9-27-328 requires specific findings only when the court orders removal from a custodial parent. DHS’s contention that the court’s order did not comply with its policy is without merit. The juvenile court’s orders do not have to comply with DHS policy. Further, the record does not show that DHS could not have paid the bills and, in fact, funds were available.

DHS argued that it could not be made a defendant without waiving sovereign immunity and that the court's order coerced DHS into bearing a financial burden which is barred. There is a waiver of sovereign immunity where an act by the legislature has created a specific waiver of immunity. The Juvenile Code expressly empowers the court to order family services in FINS cases (Arkansas Code Annotated section 9-27-330) and family services includes cash assistance, pursuant to Arkansas Code Annotated section 9-27-303(17). Pursuant to Arkansas Code Annotated section 9-27-328(a), a court is required to order family services appropriate to prevent removal. Therefore, the General Assembly has specifically waived sovereign immunity as to DHS in such cases. Finally, DHS argued that the court's order violated separation of powers, but this theory was not raised or developed below with respect to setting aside the court's September 30 order. [Ark. Dep't of Human Servs. v. R.P., 333 Ark. 516 \(1998\).](#)

The court affirmed the juvenile court's finding that DHS was in contempt for failure to provide the services as ordered and imposition of a \$250 fine. [Ark. Dep't of Human Servs. v. Clark, 305 Ark. 561 \(1991\).](#)

An order directing DHS to pay appellee a foster care board payment for a six-month period was reversed because the court lacked authority to order DHS to pay. Appellee was not a certified foster parent and was not entitled to board payments between June and November pursuant to DHS policy which mirrors the federal law definition of a foster family at 42 U.S.C.S. §672(c)(1). [Ark. Dep't of Human Servs. v. Southerland, 65 Ark. App. 97 \(1999\).](#)

The Arkansas Supreme Court upheld a juvenile judge's award of specific services, funds for a mother's medication, and bus tokens or bus credits for mother and children to attend counseling sessions. Further, the juvenile court is not required to fashion orders within DHS policy guidelines; juvenile court has the authority under the Juvenile Code to review action of DHS and the evidence supported the finding that the mother was in need of assistance and transportation. [Ark. Dep't of Human Servs. v. Clark, 304 Ark. 403 \(1991\).](#)

Family services are provided in order to:

- (1) Prevent a juvenile from being removed from a parent, guardian, or custodian;
- (2) Reunite a juvenile with a parent, guardian, or custodian from whom the juvenile was removed;

- (3) Implement a permanent plan of adoption or guardianship for a juvenile in a dependency-neglect case; or.
- (4) Rehabilitate a juvenile in a FINS or delinquency case. Ark. Code Ann. § 9-27-303(25)(B)(i)-(iv).

At least five (5) working days prior to ordering DHS, excluding community-based providers, to provide or pay for family services in any case in which DHS is not a party, the court shall:

- (1) Fax written notice of intent to order services to the DHS Director and the local OCC attorney; and
- (2) Provide DHS an opportunity to be heard. Ark. Code Ann. § 9-27-335(a)(1)-(2).

Failure to provide five (5) working days' notice to DHS renders any part of the order pertaining to DHS void. Ark. Code Ann. § 9-27-335(a)(3).

In all cases in which family services are ordered, the court shall determine the parent, guardian, or custodian's ability to pay, in whole or in part, for said services. Ark. Code Ann. § 9-27-335(c)(1).

The court's determination of ability to pay and supporting evidence shall be made in writing in the order requiring family services. Ark. Code Ann. § 9-27-335(c)(2).

If the court determines that the parent, guardian or custodian is able to pay, in whole or part, for said services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian can pay for the family service(s) ordered and ordering the parent, guardian or custodian to pay such amount periodically to the provider from whom family services are received. Ark. Code Ann. § 9-27-335(c)(3).

The court shall not specify a particular provider for placement or family services if DHS is the payor or provider. Ark. Code Ann. § 9-27-335(b).

The trial court was upheld in ordering DHS to pay the Brown School \$48,000. The trial court did not err because it ordered placement in a "residential treatment facility" and did not order a specific named placement facility. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary.

The General Assembly has waived sovereign immunity as to DHS when a court orders DHS to provide family services to prevent a juvenile from

being removed from a parent. DHS's policy not to provide financial assistance for out-of-state treatment is not binding on the court's order. There was not a violation of the separation-of-powers doctrine because the court simply ordered the juvenile to be placed in a residential treatment facility. (The placement was made to Brown and the court subsequently ordered that the juvenile remain there. DHS recommended that the juvenile remain at Brown in a report to the court dated after Medicaid benefits had been denied.)

Compliance with Arkansas Code Annotated section 20-46-106 (regarding out-of-state placements) is DHS's responsibility, and the fact that the court was eager to get treatment did not absolve DHS from its responsibility under this section. The Court also noted that the purpose of the section is to ensure whenever possible that juveniles receive treatment in-state; however, this was not the case as no facilities were available at that time in Arkansas. [Ark. Dep't of Human Servs. v T.B., 347 Ark. 593 \(2002\).](#)

Requirements Prior to Removing a Juvenile from Home

Prior to ordering a juvenile to be removed from his or her parent, guardian, or custodian and placed with DHS, another licensed agency responsible for the care of a juvenile, or a relative or other individual, the court shall order family services to prevent removal unless the health and safety of the juvenile warrant immediate removal for the juvenile's protection. [Ark. Code Ann. § 9-27-328\(a\).](#)

When the court orders such initial removal, the court shall make the following specific findings in the initial order:

- (1) Whether it is contrary to the welfare of the juvenile to remain at home;
- (2) Whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
- (3) Whether removal is in the best interest of the juvenile. [Ark. Code Ann. § 9-27-328\(b\)\(1\).](#)

DHS sought to challenge a judge's placement with the agency claiming she failed to comply with Arkansas Code Annotated section 9-27-328(a)(2) by not making specific findings of fact that family services were made available before the child was removed from the grandmother's home. The issue is moot because at a later disposition hearing and prior to the agency filing a notice of appeal, the judge placed custody with the child's mother in another county. The court does not issue advisory opinions nor review matters when the complaining litigant received the relief it requested. [Ark. Dep't of Human Servs. v. State, 318 Ark. 294 \(1994\).](#)

If the court finds that reasonable efforts to deliver family services could have been made with the juvenile safely remaining at home but were not made, the court may:

- (1) Order family services reasonably calculated to prevent the need for out-of-home placement; Ark. Code Ann. § 9-27-335(e)(2)(B);
- (2) Authorize or continue removal but shall note the failure of DHS in the record of the case; Ark. Code Ann. § 9-27-328(d).
- (3) Transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement, if such a transfer of custody is necessary:
 - (A) To protect the juvenile's health and safety; or
 - (B) To prevent the juvenile from being removed from the jurisdiction of the court; or Ark. Code Ann. § 9-27-335(e)(2)(C).
- (4) Dismiss the petition. Ark. Code Ann. § 9-27-335(e)(2)(A).

The court shall note in the record the department's failure to deliver services, Ark. Code Ann. § 9-27-328(d), or

Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by DHS or by a licensed social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile. The court shall order a transfer of custody only after determining that reasonable efforts have been made by DHS to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.

The juvenile's health and safety shall be the paramount concern of the court in determining if DHS could have made reasonable efforts to prevent the juvenile's removal. Ark. Code Ann. § 9-27-335(d)-(e).

In all instances of removal of a juvenile from the home of his or her parent, guardian, or custodian by a court, the court shall set forth in a written order:

- (1) Evidence supporting decision to remove;
- (2) Facts regarding the need for removal; and
- (3) Findings required by this section. Ark. Code Ann. § 9-27-328(e)(1)(A)-(C).

The statute requires specific findings when the court orders removal from a custodial parent. [Ark. Dep't of Human Servs. v. R.P., 333 Ark. 516, 970 S.W.2d 225 \(1998\).](#)

Transfer Custody

If it is in the best interest of the juvenile, the court may transfer custody to DHS, to another licensed agency responsible for care of juveniles, to relatives, or to other individuals. [Ark. Code Ann. § 9-27-334\(a\)\(2\)\(A\).](#)

Prior to the court placing a juvenile in a residential placement the court shall comply with the mental health assessments required by Act 1959 of 2005. [Ark. Code Ann. §§ 9-27-601–603.](#)

Custody may be transferred to a relative or other individual only after a home study is conducted by DHS or a licensed social worker and submitted to the court in writing and the court determines that the placement is in the juvenile's best interest. [Ark. Code Ann. § 9-27-335\(d\).](#)

The juvenile division of chancery court, having found a child to be dependent or neglected, has the authority to make an award of custody of the child between competing parents. [Nance v. Ark. Dep't of Human Servs., 316 Ark. 43 \(1994\).](#)

The court shall order parents or any other person named in the petition to pay a reasonable sum for support, maintenance, or education of the juvenile to any person, agency, or institution to whom custody is awarded if it appears at adjudication or disposition hearing that the parents or other person are required by law to support juvenile and are able to contribute to support of juvenile. [Ark. Code Ann. § 9-27-346\(a\).](#)

The court shall order such person to pay a reasonable sum pursuant to the Guidelines for Child Support and the Family Support Chart. [Ark. Code Ann. § 9-27-346\(a\); Administrative Order Number 10.](#)

If the court grants custody to DHS, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined by Arkansas Code Annotated section 9-28-402(12). [Ark. Code Ann. § 9-27-334\(a\)\(2\)\(B\); Ark. Code Ann. § 9-27-355\(b\)\(3\)\(A\).](#)

If the court grants custody of a juvenile to a relative or other person, the juvenile shall not:

- (1) Be placed in the custody of DHS while remaining in the relative's or other person's home, and

- (2) The juvenile shall not be removed from the custody of the relative or other person, placed in the custody of DHS, and then remain or return to the home of the relative or other person while remaining in the custody of DHS. Ark. Code Ann. § 9-27-355(b)(4)(A).

If the court transfers custody to DHS, the court shall issue an order regarding educational issues of the juvenile including determining whether the parent or guardian:

- (1) May have access to the juvenile's school records;
- (2) Obtain information on the current placement of the child, including the name and address of the child's foster parent or provider, if the parent or guardian has access to the child's school records; and
- (3) May participate in school conferences or similar activities at the child's school. Ark. Code Ann. § 9-28-113(a)(6)(A).

If custody transferred to DHS, the circuit court may appoint a person to consent to an initial evaluation and serve as a surrogate parent, pursuant to the Individuals with Disabilities Education Act (IDEA). Ark. Code Ann. § 9-28-113(b)(6)(B).

Parent Training

Order that the parent, both parents, or guardian of the juvenile attend a court-approved parental responsibility training program, if available.

The court may make reasonable orders requiring proof of completion of such training program within a certain time period and payment of a fee covering the cost of the training program. Ark. Code Ann. § 9-27-330(a)(10)(A)-(B).

Contempt Sanctions

The court may provide that any violation of its orders shall subject the parent, both parents, the juvenile, the custodian, or the guardian to contempt sanctions. Ark. Code Ann. § 9-27-334 (c).

No court may commit a juvenile to DYS solely for criminal contempt. Ark. Code Ann. § 9-27-335(g); Ark. Code Ann. § 9-28-208(a)(2).

No Reunification Efforts Hearings

Purpose

To determine whether or not DHS should provide reunification services to reunite a child with his or her family. Ark. Code Ann. § 9-27-365(b).

Time Constraints

Any party can file a motion for no reunification services at any time. Ark. Code Ann. § 9-27-365(a)(1)(A).

The motion shall be provided to all parties at least twenty (20) days before a scheduled hearing, and the court may conduct a hearing immediately following or concurrent with the adjudication if proper notice has been provided. Ark. Code Ann. § 9-27-365(a)(1)(B)-(C).

If a party responds, the time for responses shall be no later than ten (10) days after receipt of the motion. Ark. Code Ann. § 9-27-365(a)(3)(B).

The court shall conduct and complete a no reunification hearing within fifty (50) days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided. Ark. Code Ann. § 9-27-365(b)(1).

Upon good cause shown, the hearing may be continued for an additional twenty (20) days. Ark. Code Ann. § 9-27-365(b)(2).

Upon a determination that no reunification services shall be provided, the court shall hold a permanency planning hearing within thirty (30) days, unless permanency has been achieved through guardianship, custody, or a petition for termination of parental rights has been filed. Ark. Code Ann. § 9-27-365(d).

A written order setting forth the court's findings of fact and law shall be filed with the court, by the court, or by a party or party's attorneys as designated by the court within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-365(e).

Notice

Any party filing a no reunification motion shall provide notice to all parties. Ark. Code Ann. § 9-27-365(a).

The notice shall be provided to the parties in writing at least twenty (20) calendar days before a scheduled hearing and shall identify sufficient facts and grounds in sufficient detail to put the defendant on notice as to the basis for the motion for no reunification services. Ark. Code Ann. § 9-27-365(a)(1)-(2).

Burden of Proof

Clear and convincing evidence. Ark. Code Ann. § 9-27-365(c); Ark. Code Ann. § 9-27-325(h)(2)(C).

Court Finding

An order terminating reunification services to a party and DHS's duty to provide services shall be based on a determination that:

- It is in the child's best interest, Ark. Code Ann. § 9-27-365(c)(1); and
- One or more of the following grounds exist:
 - (1) A circuit court has determined that the parent has subjected the child to aggravated circumstances that include:
 - (A) A child being abandoned;
 - (B) A child being chronically abused;
 - (C) A child being subjected to extreme or repeated cruelty or sexual abuse;

Infant was found dependent-neglected as a result of multiple broken bones of varying ages. The trial court found that the injuries were not accidental; that one or both parents were the likely cause of the injuries; and despite the parents' denial, the X-rays indicated that the fractures were from varying ages and they were of the type consistent with child abuse, and the radiologist findings were suspicious of trauma. While noting that the results of the test for brittle bone disease had not yet been received, the trial court found that the observation of medical personnel did not reveal symptoms of brittle bone disease. The adjudication order was not appealed. At the disposition hearing on April 7, the trial court held that the goal should be adoption. Ark. Code Ann. § 9-28-113(a)(6)(A).

On May 13, the court entered a no-reunification order finding that the child had been subjected to extreme and repeated cruelty, that the injuries were not accidental, that one or both parents caused the injuries, and that when received, the brittle bone test showed no abnormal findings. At this hearing the trial court denied appellant's motion to call an expert witness to testify as to alternative theories for the infants injuries. The court ruled that res judicata applied and that expert testimony was not relevant at this stage of the proceedings. Appellants' filed a notice of appeal after the no-reunification order and the TPR order handed down on November 16, 2004.

All of appellants' issues on appeal related to the trial court's denial of expert testimony at the no-reunification hearing to refute its

previous finding of child abuse by the parents. The appellate court noted that the time for appellant to present that testimony was prior to the adjudication. The appellate court held that it was not necessary to address appellant's res judicata argument because appellant failed to appeal the adjudication order. The supreme court made clear in the Jefferson and Lewis cases that the appellate court will not re-litigate the adjudication hearing at future hearings. The appellant could have appealed the adjudication order, but failed to do so.

The denial to allow the expert to examine the infant only to refute the injuries of the finding of the adjudication are not permitted under Jefferson. [Neves da Rocha v. Ark. Dep't of Human Servs., 93 Ark. App. 386 \(2005\).](#)

- (D) A determination by a judge that there is little likelihood that services to the family will result in successful reunification; or
 - (E) A child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three (3) or more times in the last fifteen (15) months; or
 - (F) A child or a sibling being neglected or abused such that the abuse or neglect could endanger the life of the child. [Ark. Code Ann. § 9-27-365\(c\)\(2\)\(A\).](#)
- (2) A circuit court determined that the parent has:
- (A) Committed murder of any child;
 - (B) Committed manslaughter of any child;
 - (C) Aided, abetted, attempted, conspired, or solicited to commit such murder or manslaughter;
 - (D) Committed a felony battery that results in serious bodily injury to any child;

The juvenile court is a court of competent jurisdiction to determine that a parent committed a felony assault that results in serious bodily injury to the child. The court reasoned that a criminal conviction is not required. [Brewer v. Ark. Dep't of Human Servs., 71 Ark. App. 364 \(2000\) \(substituted opinion on grant of rehearing delivered April 25, 2001\).](#)

- (E) Had parental rights involuntarily terminated as to a sibling of the child; or
- (F) Abandoned an infant. Ark. Code Ann. § 9-27-365(c)(2)(B).

Abandoned infant means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant. Ark. Code Ann. § 9-27-303(1).

Six-Month Review Hearings

Purpose

To review a dependent-neglected or FINS case at least every six (6) months when a juvenile is placed out of his or her home until there is a permanent order of custody, guardianship, or other permanent placement or the juvenile is returned to his or her parent, guardian, or custodian and the court has not discontinued orders for family services. Ark. Code Ann. § 9-27-337(a)(1)(A)-(B).

To review the case sufficiently to determine the future status based on the juvenile's best interest. Ark. Code Ann. § 9-27-337(e)(1)(A).

Time Constraints

The review hearing shall be held within six (6) months after the original out-of-home placement and every six (6) months thereafter until permanency is achieved. Ark. Code Ann. § 9-27-337(a)(2).

The court may require review prior to six-month review date, and the court shall announce the date, time, and place of the hearing. Ark. Code Ann. § 9-27-337(b).

Any party may request the court to review case at any time during the pendency of an out-of-home placement, and the party requesting the hearing shall provide reasonable notice to all parties. Ark. Code Ann. § 9-27-337(c).

Seven (7) business days prior to a scheduled dependency-neglect review hearing, DHS and the CASA, if appointed, shall file a review report including a certificate of service that the report has been distributed to all parties or their attorneys and the CASA, if appointed. Ark. Code Ann. § 9-27-361(a)(1).

A written order shall be filed and distributed by the court or by a party or party's attorney to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-337(e)(2).

Court Reports

The DHS court report shall include a summary of the parties' compliance with the court orders and case plan, including a description of services and assistance that DHS has provided and recommendations to the court. Ark. Code Ann. § 9-27-361(a)(2)(A).

If the child has been returned home, the DHS report shall include a description of any services needed by and requirements of the parents, including, but not limited to, a safety plan to ensure the health and safety of the juvenile in the home. Ark. Code Ann. § 9-27-361(a)(2)(B).

If the child is in DHS custody, the DHS court report shall outline DHS's efforts to identify and notify adult grandparents and other adult relatives. It shall include a list of all relatives notified and their response to interest in participating in the care and placement of the child, including foster care, guardianship, and visitation. Ark. Code Ann. § 9-27-361(a)(2)(C).

The CASA report shall include, but is not be limited to:

- (1) Any independent factual information that he or she feels is relevant to the case;
- (2) A summary of the parties' compliance with the court orders;
- (3) Any information on adult relatives, including their contact information and the volunteer's recommendation on placement and visitation; and
- (4) Recommendations to the court. Ark. Code Ann. § 9-27-361(a)(3)(A)-(D).

At the review hearing, the court shall determine on the record whether the previously filed reports and addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report, part of a report, or addendum report that was not admitted into evidence. Ark. Code Ann. § 9-27-361(a)(4)(A)-(B); Ark. Code Ann. § 9-27-361(c)(2)(B).

Court Review Findings

The court shall determine and include in its order whether:

- (1) The case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;
- (2) The state has made reasonable efforts to provide family services;

- (3) The case plan is moving towards an appropriate permanency plan, pursuant to Arkansas Code Annotated section 9-27-338; and
- (4) The visitation plan is appropriate for the juvenile, parent or parents, and siblings, if separated. Ark. Code Ann. § 9-27-337(e)(1)(B)(i).

The court's determination must be based on a full and deliberate consideration of the following:

- (1) The extent of compliance with the case plan, including, but not limited to, a review of DHS's care for the health, safety, and education of the juvenile while the juvenile has been in an out-of-home placement;
- (2) The extent of progress that has been made toward alleviating or mitigating the causes of the out-of-home placement;
- (3) Whether the juvenile should be returned to the parent(s) and whether the juvenile's health and safety can be protected by the parent(s) if returned home;
- (4) Whether there is an appropriate permanency plan for the juvenile, pursuant to Arkansas Code Annotated section 9-27-338, including concurrent planning. Ark. Code Ann. § 9-27-337(e)(1)(C).

Appellant brought an appeal from a trial court order placing permanent custody of her son, C.N., with his biological father and closing the dependency-neglect case. Appellant argued that the circuit court lacked the authority to vest permanent custody in the father and to close the d-n case, sua sponte, and without notice at the six-month review hearing. She also argued that there was insufficient evidence to support the circuit court's decision not to return C.N. to her custody. The Court of Appeals affirmed the circuit court's decision. After granting a petition for review, the Supreme Court reversed the circuit court's decision and held that the circuit court clearly erred in finding that it was in C.N.'s best interest to be placed in the father's permanent custody. The Supreme Court reversed the circuit court's order and remanded with directions for the court to return custody of C.N. to appellant. The court noted that "[i]f facts have developed during the pendency of the appeal that would cause serious concern about returning C.N. to Ingle's care, any party may file a petition requesting the circuit court to address those matters." [Ingle v. Ark. Dep't of Human Servs., 2014 Ark. 53.](#)

Permanent custody with aunt at review hearing upheld where four-year old child had been subject to two d-n adjudications and two removals. The first was from his mother as a result of her drug use and then from his maternal

grandparents (appellants) following a report that his mother was manufacturing methamphetamine in appellant's home and that they were unwilling to have the child drug tested. When he tested, he tested positive for methamphetamine. Appellant's argued that the court erred in granting permanent custody at the review hearing because they did not have notice that the court was terminating reunification services, that the court made a permanency decision at the review hearing, not the permanency planning hearing and it did not follow the permanency preferences. Appellant's argument is not preserved for appeal because the objection to permanent custody with the aunt was not specific enough to put the circuit court on notice of the error alleged. [Scarborough v. Ark. Dep't of Human Servs., 2013 Ark. App. 296.](#)

Appellant's only issue on appeal is whether there was sufficient evidence to support the trial court's order setting a termination hearing six months after the case was opened. However, without a 54(b) certification this is not a final, appealable order. [Gregory v. Ark. Dep't of Human Servs., 2012 Ark. App. 364.](#)

Change of custody consolidated in dependency-neglect action upheld. Appellant's children were removed due to severe physical abuse of her five-week old child. The father of one of the children (A.J.) filed a notice with the court of a motion for change of custody. The trial court found the children to be dependent-neglected and ordered temporary custody of A.J. with her father with the goal of reunification with appellant. Several review hearings were held. Court continued custody with the father and entered change custody based on a material change of circumstances.

A court may consolidate all actions involving a common question of law or fact pending before the court. In cases involving children, the primary consideration is the child's best interest and welfare, regardless of the goals of the parties or the particular type of proceeding. Having found that appellant had not complied with the case plan, the court properly made the custody determination based on the change of custody petition and found a material change in circumstances. [Miller v. Ark. Dep't of Human Servs., 86 Ark. App. 172 \(2004\).](#)

Custody Termination

Three children were originally removed from the custody of their parents and placed with their paternal grandparents, appellants. DHS later filed a motion to terminate custody with the appellants and dismiss the appellants as parties to the case or in the alternative to terminate reunification services to the appellants. On appeal, appellants argued that the circuit court terminated a custodianship, but

continued to use guardianship and custodianship interchangeably. They further argued that documentation was never presented to the circuit court to prove that appellants had legal custody or legal guardianship of the children. These arguments were not preserved for appeal. The appellate court noted that even if the argument was preserved it would fail because although the parties and their counsel used custody and guardianship interchangeably, the court did not. The trial court found that the children's dependency-neglect adjudication constituted a material change of circumstance and that it was not in their best interest to remain with appellants. [McHenry v. Ark. Dep't of Human Servs., 2013 Ark. App. 711.](#)

Permanency Planning Hearing

Purpose

To finalize a permanency plan for the juvenile. [Ark. Code Ann. § 9-27-338\(a\)\(1\).](#)

Time Constraints

The Permanency Planning Hearing (PPH) shall be held:

- (1) No later than twelve (12) months after the date the juvenile enters an out-of-home placement;
- (2) After a juvenile has been in an out-of-home placement for fifteen (15) of the previous twenty-two (22) months, excluding trial placements with parents and time on runaway status; or
- (3) No later than thirty (30) days after the no-reunification hearing. [Ark. Code Ann. § 9-27-338\(a\)\(1\)\(A\)-\(C\).](#)

Appellants' objection to the permanency hearing being held on the same day as the dependency-neglect adjudication was effectively waived when appellant agreed to having both hearings on the same day on the record. [Harwell-Williams v. Ark. Dep't of Human Servs., 368 Ark. 183 \(2006\).](#)

Seven (7) business days prior to a scheduled dependency-neglect PPH, DHS and the CASA volunteer, if appointed, shall file with the court a permanency planning court report that includes a certificate of service that establishes that the report has been distributed to all parties or their attorneys and the CASA, if appointed. [Ark. Code Ann. § 9-27-361\(b\)\(1\).](#)

If the court authorizes a plan to return home, the placement of the juvenile in the home of the parent, guardian, or custodian shall occur within a time frame consistent with the juvenile's developmental needs but no later than three (3)

months from the date of the permanency planning hearing. Ark. Code Ann. § 9-27-338(c)(3)(B)(ii).

If the court finds that DHS failed to provide services as outlined in the case plan, the court shall schedule another PPH for no later than six (6) months. Ark. Code Ann. § 9-27-338(c)(4)(C)(ii).

If the court determines that adoption is the goal, DHS shall file a TPR petition within thirty (30) days of the PPH hearing that established adoption as the permanency goal. Ark. Code Ann. § 9-27-338(f).

A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-338(e).

If a juvenile remains in an out-of-home placement after the initial PPH, an annual PPH shall be held to reassess the permanency plan for the juvenile. Ark. Code Ann. § 9-27-338(a)(2).

Nothing shall prevent DHS or the AAL from filing a petition for termination of parental rights, guardianship, or permanent custody at any time prior to a PPH. Ark. Code Ann. § 9-27-338(b).

Court Reports

The DHS permanency planning court report shall include, but not be limited to, the following:

- (1) A summary of the parties' compliance with the court orders and case plan, including the description of the services and assistance the department has provided;
- (2) A list of all the placements the juvenile has been in;
- (3) A recommendation and discussion regarding the permanency plan, including the appropriateness of the plan, a timeline, and the steps and services necessary to achieve the plan, including the persons responsible; and
- (4) The location of any siblings, and if separated, a statement for the reasons for separation and any efforts to reunite or maintain contact if appropriate and in the siblings' best interest. Ark. Code Ann. § 9-27-361(b)(2).

The CASA report shall include, but is not limited to:

- (1) Any independent factual information that he or she feels is relevant to the case;
- (2) A summary of the parties' compliance with the court orders;
- (3) Any information on adult relatives, including their contact information and the volunteer's recommendation on relative placement and visitation; and
- (4) Recommendations to the court. Ark. Code Ann. § 9-27-361(b)(3)(A)-(D).

At the PPH, the court shall determine on the record whether the reports or addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report, part of a report, or addendum report that was not admitted into evidence on the record. Ark. Code Ann. § 9-27-361(b)(4)(A)-(B); Ark. Code Ann. § 9-27-361(c)(2)(A).

Court Findings - Permanency Plans

At the PPH, based upon the facts of the case, the court shall enter a permanency goals, listed in order of preference, in accordance with the best interest, health, and safety of the juvenile. Ark. Code Ann. § 9-27-338(c).

Custody with Fit Parent

Place custody of the juvenile with a fit parent at the PPH. Ark. Code Ann. § 9-27-338(c)(1).

This is the second order on appeal as a result of a remand from the Court of Appeals that resulted in an order of custody to maternal grandparents by the trial court. The law establishes a preference for a natural parent in third party cases unless it is established that the parent is unfit. In Chase I, the Court held that appellant fell within the first preference under the permanency planning statute to return a child to a fit parent if it is in the best interest of the child and child's health and safety can be adequately safeguarded. Appellant, along with DHS and the attorney ad litem, argued that there was insufficient evidence to award custody to appellant. The appellate court reversed and remanded with direction to transfer custody to appellant. [Chase v. Arkansas Dept. of Human Services, 2013 Ark. App. 474.](#)

Appellant argued that the court erred in awarding custody of the children with their maternal grandmother since he was a fit parent and should have received custody under statutory preference. The court held the first statutory preference applied to appellant. The court of appeals erred in its

interpretation that it is a return to the parent from who the child had been taken. Judkins v. Duvall, 97 Ark. App. 260 (2007), was overruled to the extent it is inconsistent with this opinion. The Supreme Court also indicated that it was not convinced that the circuit court, in conducting the best interest analysis, applied the statutory preference to appellant and reversed and remanded the case. The court noted that appellant raised a constitutional argument that he had a protected liberty interest to raise his children without government intervention. However, appellant did not raise this issue with the circuit court, nor did he raise it in his brief on appeal. [Mahone v. Ark. Dep't of Human Servs., 2011 Ark. 370.](#)

Note: Statute changed in 2011 to reflect holding in *Mahone* and clarify first priority for placement is with a fit parent if in the child's best interest.

Appellant argued that the trial court erred in granting custody of D.D. to his father. Appellant's dependency-neglect case began in 2008, and D.D. was removed from appellant's home on two separate occasions, first for neglect and later for physical abuse. The trial court did not err in granting custody to the father because appellant was unable to provide D.D. the stability and structure to meet his mental health needs. [Keckler v. Ark. Dep't of Human Servs, 2011 Ark. App. 375.](#)

Return Custody

Return the juvenile to the guardian or custodian from whom the juvenile was originally removed at the PPH. [Ark. Code Ann. § 9-27-338\(c\)\(2\).](#)

Plan to Return Home IF...

Authorize plan to return the juvenile to the parent, guardian, or custodian only if the court finds:

- (1) The parent, guardian, or custodian is complying with the established case plan and court orders, making significant measurable progress towards achieving the goals of the case plan and is diligently working toward reunification or placement in the home;
 - (A) A parent's, guardian's or custodian's resumption of contact or overtures towards participating in the case plan and court orders in the months or weeks immediately preceding the PHH are insufficient grounds for authorizing a plan to return or be placed in the home as the permanency plan; and
 - (B) The burden is on the parent, guardian, or custodian to demonstrate genuine, sustainable investment in completing the requirements of

the case plan and following the orders of the court in order to authorize a plan to return home as a permanency goal. Ark. Code Ann. § 9-27-338(c)(3)(A)(iii).

- (2) And the parent, guardian, or custodian is making significant and measurable progress toward remedying the conditions that:
 - (A) Caused the juvenile's removal and the juvenile's continued removal from the home; or
 - (B) Prohibit placement of the juvenile in the home of the parent; and
 - (C) Placement of the juvenile in the home of the parent, guardian, or custodian shall occur within a time frame consistent with the juvenile's developmental needs, but no later than three (3) months from the date of the PPH. Ark. Code Ann. § 9-27-338(c)(3)(B).

Appellant appealed a permanency planning hearing and closure order granting permanent custody of her child to appellant's mother. Appellant arguing that there was not sufficient evidence to show that the placement was in her child's best interest and that she had significantly complied with the court's orders and case plan. The Court of Appeals affirmed the circuit court's decision and on a on grant from a petition for review, the Supreme Court reversed. The Supreme Court held that there was sufficient evidence to support the circuit court's finding that it was not appropriate to return J.G. to his mother at the time of the permanency-planning hearing, in accordance with Arkansas Code Annotated section 9-27-338(c)(1), but there was not sufficient evidence to find that permanent placement, pursuant to section 9-27-338(c)(2), which authorizes the circuit court to create a plan to return the juvenile to the parent within three months of the PPH, was not in the child's best interest. [Contreras v. Ark. Dep't of Human Servs., 2014 Ark. 51](#).

Appellant failed to argue that the trial court erred in not following the preference under the permanency planning statute for a plan to return a child to parent if the parent was making significant and measurable progress and the child could be returned within three months. The Court went further to note that had appellant's argument been preserved for appeal, the evidence was sufficient to support the trial court's decision to grant custody to the paternal grandparents. Any lack of services was due to appellant's failure to keep DHS informed of where she lived. [Burns v. Arkansas Dept. of Human Services, 2013 Ark. App. 521](#).

Plan for Adoption

Authorize plan for adoption with DHS's filing a petition for termination of parental rights unless:

- (1) Juvenile is being cared for by a relative and the court finds that either:
 - (A) The relative has made a long-term commitment to the child and is willing to pursue guardianship or permanent custody; or
 - (B) The juvenile is being cared for by his or her minor parent who is in foster care; and
 - (C) Termination of parental rights is not in the best interest of the juvenile, Ark. Code Ann. § 9-27-338(c)(4)(A);

Appellant argued that termination was not required to achieve permanency for the children because they were placed with a relative. While placement with a relative may be a compelling reason not to terminate, it must also be in the child's best interest. The court of appeals stated, "It cannot seriously be argued that termination of parental rights of a person who physically and sexually abused his children is not in the children's best interest."
Hall v. Ark. Dep't of Human Servs., 101 Ark. App. 417 (2008).

- (2) DHS has documented in the case plan a compelling reason why filing a TPR petition is not in the juvenile's best interest, and the court approves the compelling reason as documented in the case plan, Ark. Code Ann. § 9-27-338(c)(4)(B); or
- (3) DHS has not provided services to the family of the juvenile, consistent with the time period in the case plan, such services as DHS deemed necessary for the safe return of the juvenile to his or her home if reunification services were required to be made to the family. Ark. Code Ann. § 9-27-338(c)(4)(C)(i).

If the court finds that DHS failed to provide services, the court shall schedule another PPH for no later than six (6) months. Ark. Code Ann. § 9-27-338(c)(4)(C)(ii).

Authorize Plan for Guardianship

Authorize a plan to obtain a guardian for the juvenile; Ark. Code Ann. § 9-27-338(c)(5).

Appellant appealed the trial court's order granting guardianship of her two children with their paternal aunt arising out of a dependency-neglect proceeding where the children had been found to be at substantial risk of serious harm due to appellant's abusive relationship. Appellant first argued that there was no evidence that she was an unfit parent. The court relied on Fletcher, finding parental preference does not automatically attach to a natural parent and is only one factor to consider in determining suitability. The key factor in determining guardianship is the best interest of the child. Although appellant had made strides in her case, the trial court specifically found that appellant could not provide for the emotional needs of her children and that it was in their best interest to appoint a guardian. [Gantt v. Ark. Dep't of Human Servs., 2013 Ark. App. 217.](#)

Authorize Plan for Custody

Authorize a plan to obtain a permanent custodian for the juvenile, including permanent custody with a fit and willing relative, [Ark. Code Ann. § 9-27-338\(c\)\(6\)](#); or

The circuit court awarded permanent custody of appellant's children to their aunt and denied appellant visitation. Evidence was presented at the Permanency Planning Hearing indicating visitation was not in the children's best interest and appellant's argument that denying visitation was a punishment was without merit. [Cooper v. Ark. Dep't of Human Servs., 2012 Ark. App. 513.](#)

Appellees mistakenly filed their petition to change visitation under the case name and number under a closed dependency-neglect case and appellant counterclaimed for custody. The permanency planning order placing the child with the Sextons resolved the dependency-neglect issue under the juvenile code and there was no jurisdiction to reopen the dependency-neglect case to modify visitation. The juvenile division court had jurisdiction to hear the matter under general custody law. Although the circuit court decided the issue as a permanency placement the court considered and made findings that comport with the standards under general custody law. The goal is to maintain stability and continuity for the child and not to change custody unless there is evidence of some material change in circumstances that shows that such a change is in the child's best interest. The petition modifying visitation and denying custody is affirmed. [Young v. Sexton, 2012 Ark. 334.](#)

Custody to maternal grandmother affirmed after termination petition filed. Appellant was not in compliance with case plan and demonstrated a

lack of stability throughout the case as well as two prior cases. Appellant failed to maintain steady employment or a stable residence, had numerous criminal charges and attempted suicide on four occasions. [Beeson v. Ark. Dep't of Human Servs., 2011 Ark. App. 317.](#)

The children had been removed from their mother, and appellant, the children's father, appealed the trial court's permanent custody award to the maternal grandparents. The court of appeals agreed with appellant that there was insufficient evidence to award custody to the grandparents. Six months prior to ordering custody with the grandparents appellant had not had a positive drug test, maintained employment and was living in an approved housing situation with his parents co-parenting another child, all with minimal assistance from DHS. The appellate court reversed and remanded the trial court to reinstate temporary custody while DHS provides service to determine if he can parent the children. See [Chase v. Ark. Dep't of Human Servs., 2012 Ark. App. 311.](#) On remand, the circuit court again granted the maternal grandparents permanent custody of the children, and the father appealed. The court of appeals reversed and remanded, holding that the circuit court erred in awarding custody of the child to the grandparents instead of the father because the father was entitled to the preference given natural parents and that the court erred in finding the father unfit and untruthful. [Chase v. Ark. Dep't of Human Servs., 2013 Ark. App. 474.](#)

Appellant first argued that the trial court erred in granting custody of his daughters (8 years and 14 months) without review of a home study prior to granting custody as required by law. The appellate court cited Arkansas Code Annotated section 9-27-355 (c)(1) requiring a written home study to be presented to the court prior to an award of custody, but found that appellant failed to preserve this issue for appeal. Appellant then argued that the custodial placement with the maternal grandparents was not in his children's best interest, particularly when the court did not order visitation to appellant's sister or considering her as a back-up placement. The court considered testimony from the child's counselor and family members and did not err in finding that placement with the grandparents was in the children's best interest and necessary for their protection. [Rose v. Ark. Dep't of Human Servs., 2010 Ark. App. 668.](#)

The court of appeals affirmed the circuit court's permanency planning order transferring custody to the mother and granting supervised visitation with the father. [Collier v. Ark. Dep't of Human Servs., 2009 Ark. App. 565.](#)

Circuit court affirmed for placing child with father at permanency planning hearing. At the permanency planning hearing the court determined that it was in the juvenile's best interest for the goal to be changed and he authorized plan for permanent placement with the juvenile's father. The court further made specific findings as to the permanency plan alternatives and why this plan was in the child's best interest. Appellant failed to demonstrate that the court erred.

Appellant argued that the trial court erred because the father failed to show a material change of circumstances to warrant the change in custody. Had this been a domestic relations case, the burden would be on the father to show such a change; however, it was a FINS case and the dispositions are governed solely by the juvenile code.

Finally, appellant argues that it was not in the juvenile's best interest to be placed with his father and that her mental evaluation was faulty and there were variations of opinion about alleged sexual abuse. Due deference to assess credibility of the witness is left the trial judge, and the court found that it was not left with a distinct and firm conviction that a mistake had been made. The trial court was affirmed on all points.
[Judkins v. Ark. Dep't of Human Servs., 97 Ark. App. 260 \(2007\).](#)

APPLA only IF...

Authorize a plan for another permanent planned living arrangement (APPLA).

The APPLA plan shall include a permanent planned living arrangement and addresses the quality of services, including, but not limited to, independent living services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive. [Ark. Code Ann. § 9-27-338\(c\)\(7\)\(A\).](#)

The court shall only accept APPLA only if DHS has documented to the circuit court a compelling reason for determining that it would not be in the best interest of the juvenile to follow one (1) of the other permanency plans. [Ark. Code Ann. § 9-27-338\(c\)\(7\)\(B\).](#)

Required Reasonable Efforts - Adoption Safe Families Act (ASFA) Findings

The court shall make a finding on whether DHS has made reasonable efforts and shall describe the efforts to finalize the permanency plan for the juvenile. [Ark. Code Ann. § 9-27-338\(d\).](#)

If a reasonable efforts to finalize the permanency plan is not made within the twelve (12) months of the date the child comes into care, the child becomes ineligible for IV-E funding from the end of the 12th month following the date the child is considered to have entered foster care, or the end of the month of the

most recent judicial determination to finalize permanency was made and remains ineligible until such a determination is made. 45 CFR Sec. 1356.21(b)(2)(i).

Fifteenth-Month Review Hearing

Purpose

To determine if DHS shall file a TPR petition if the juvenile has been out of the home for fifteen (15) continuous months, excluding trial placements or runaway status, and the permanency planning hearing goal was either reunification or APPLA. Ark. Code Ann. § 9-27-359(a).

Time Constraints

When the juvenile has been out of the home for fifteen (15) continuous months, excluding trial placements and time on runaway status, the court should conduct a fifteen-month review hearing. Ark. Code Ann. § 9-27-338(a)(1).

A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-359(e).

If court approves permanency goal to terminate, DHS shall file TPR petition no later than the fifteenth month of the child's entry into foster care. Ark. Code Ann. § 9-27-359(c).

If court finds that the child should remain in an out-of-home placement, the court shall review the case every six (6) months with an annual permanency planning hearing. Ark. Code Ann. § 9-27-359(d).

Court Findings

The circuit court shall authorize DHS to file a TPR petition unless:

- (1) The juvenile is being cared for by a relative who is willing to make a long-term commitment pursuing adoption, guardianship, or permanent custody, and TPR is not in the juvenile's best interest; Ark. Code Ann. § 9-27-359(b)(1)(A).

Permanent custody to maternal grandfather and his wife affirmed. Appellant argued insufficient evidence to support that custody was in child's best interest. Evidence supported that maternal grandfather had provided appellant's son stability and he had been in his home since the review hearing. Appellant continued to exhibit poor judgment in her relationship with her boyfriend. She failed to complete domestic violence

classes as directed and lacked the stability her son needed. [Penn v. Ark. Dep't of Human Servs., 2013 Ark. App. 327.](#)

Appellant argued that the court erred in granting custody to a relative without first considering reunification, and that there was insufficient evidence to support a finding that it was in the children's best interest. The only time period under review for appeal was between the first permanency planning hearing and the fifteen month hearing. The issue was the children's well-being and the appellant's inability to benefit from the services. The children's counselor testified that the children were not able to return to the parents and would need a minimum of six months to address anxiety and anger issues resulting from visitation with parents. The appellate court noted that a custody order with parental visitation was a favorable ruling for the parents since it was a fifteen-month review hearing which authorizes the court to terminate parental rights, except in limited circumstances. [Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 522.](#)

The trial court placed two younger children with their father and closed their case and left older youth in appellant's home and the case remained open. The children were removed from appellant's home three times within in the past 15 months; appellant continued to have drug abuse problems; and there was evidence that the younger children were thriving in their father's care. [Coleman v. Ark. Dep't of Human Servs., 2010 Ark. App. 851.](#)

- (2) The juvenile is being cared for by his or her parent who is in foster care and termination is not in the juvenile's best interest. [Ark. Code Ann. § 9-27-359\(b\)\(1\)\(B\).](#)
- (3) DHS has documented in the case plan a compelling reason why termination is not in the juvenile's best interest, and the court approves the compelling reasons, [Ark. Code Ann. § 9-27-359\(b\)\(2\);](#) or
- (4) DHS has failed to provide the family services consistent with the time period in the case plan deemed necessary for the safe return of the juvenile if such services were required. [Ark. Code Ann. § 9-27-359\(b\)\(3\).](#)

Foster Youth Transition Plan Hearings

Purpose

Prior to closing a juvenile's case, the court shall conduct a hearing to ensure compliance the foster youth transition plan. [Ark. Code Ann. § 9-27-363\(h\)-\(i\).](#)

Time Constraints

DHS shall develop a transitional plan with every juvenile in foster care no later than the juvenile's 17th birthday or within ninety (90) days of entering a foster care program for juveniles who enter foster care at seventeen (17) years of age or older. Ark. Code Ann. § 9-27-363(b).

Before closing a case, DHS shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

- (1) Social security card;
- (2) Certified birth certificate or verification of birth record, if available or should have been available to the department;
- (3) Family photos in the possession of the department;
- (4) All the juvenile's health records for the time the juvenile was in foster care and any other medical records that were available or should have been available to the department;

A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private; and

- (5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department. Ark. Code Ann. § 9-27-363(e).

Within thirty (30) days after the juvenile leaves foster care, DHS shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available. Ark. Code Ann. § 9-27-363(f).

DHS shall not request a circuit court to close a family in need of services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section. Ark. Code Ann. § 9-27-363(g).

A circuit court shall continue jurisdiction over a juvenile who has reached eighteen (18) years of age to ensure compliance with Arkansas Code Annotated section § 9-28-114. Ark. Code Ann. § 9-27-363(i).

Notice

DHS shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held. Ark. Code Ann. § 9-27-363(h).

Transition Plan

The plan shall include without limitation written information and confirmation concerning:

- (1) The juvenile's right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services, including without limitation the John H. Chafee Foster Care Independence Program and other transitional services; and
- (2) The juvenile's case, including his or her biological family, foster care placement history, tribal information if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling. Ark. Code Ann. § 9-27-363(b).

DHS shall assist the juvenile with the following:

- (1) Completing applications for ARKids First, Medicaid, or assistance in obtaining other health insurance;
- (2) Referrals to transitional housing, if available, or assistance in securing other housing; and
- (3) Assistance in obtaining employment or other financial support;
- (4) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and
- (5) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources to the juvenile based on his or her best interests. Ark. Code Ann. § 9-27-363(c).

A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally. Ark. Code Ann. § 9-27-363(d).

Court Finding

A court may terminate jurisdiction upon a showing that:

- (1) DHS has complied with Arkansas Code Annotated section 9-27-363, or
- (2) The juvenile has refused the services. Ark. Code Ann. § 9-27-363(k).

The court can continue jurisdiction for other reasons as provided for by law. Ark. Code Ann. § 9-27-363(j).

Termination of Parental Rights (TPR) Hearing

Purpose

To be used only when DHS is attempting to clear a juvenile for permanent placement. Ark. Code Ann. § 9-27-341(a)(2).

To provide permanency in a juvenile's life when a return home is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that the return home cannot be accomplished in a reasonable period of time, as viewed from the juvenile's perspective. Ark. Code Ann. § 9-27-341(a)(3).

A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the PPH and preceding the TPR hearing is an insufficient reason not to terminate parental rights. Ark. Code Ann. § 9-27-341(a)(4)(A).

TPR affirmed after original termination case was reversed and remanded to the circuit court with instruction to consider appellant's recent stability. The appellate court noted that the circuit court followed the appellate court's instructions and found no compelling evidence that appellant's recent mental health improvements were anything but "cyclic improvement... [that appellant] had not progressed to provide stability in all other aspects of her life necessary to keep [her child] out of danger."
[Prows v. Ark. Dep't of Human Servs., 2009 Ark. App. 206.](#)

The court of appeals held that the trial court erred and reversed appellant's termination of parental rights. The court held it was an error for the trial court not to consider appellant's recent improvements prior to the termination hearing. The appellate court recognized that evidence prior to termination might not outweigh other evidence demonstrating a failure to remedy the situation that caused removal, but the court remanded the case and directed the circuit court to consider such evidence.
[Prows v. Ark. Dep't of Human Servs., 102 Ark. App. 205 \(2008\).](#)

The supreme court noted that appellant's recent steps prior to the termination hearing to gain employment and housing did not negate her history of instability. When appellant did work, it was with a temporary agency, and at the time of the termination hearing, she was laid off.

Appellant never provided documented evidence of support payments for the children despite the trial court's request. Appellant married a convicted sex offender, who as a condition of his parole could not have any unsupervised contact with minors, after her four minor children were placed in foster care. Appellant failed to maintain her counseling and medication management for depression.

The supreme court stated the bottom line is that the evidence was clear that these children needed a permanent and stable environment. Although the appellant began to make some progress, the children had been out of the home for two years and "her compliance was at the eleventh hour. It was not an error for the trial court to disregard the progress she had made immediately before the termination hearing. This progress did not outweigh other evidence demonstrating a failure to comply and remedy the situation that caused the children to be removed. [Camarillo-Cox v. Ark. Dep't of Human Servs.](#), 360 Ark. 340 (2005).

Termination of parental rights was pursued because a return of the child to the appellant's home would have been contrary to the child's health, safety, or welfare and because it appeared that the return could not be accomplished within a reasonable period of time. [M.T. v. Ark. Dep't of Human Servs.](#), 58 Ark. App. 302 (1997).

The intent of the TPR statute is to provide permanency in a juvenile's life when a return is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that return to the family home cannot be accomplished within a reasonable time. [Crawford v. Ark. Dep't of Human Servs.](#), 330 Ark. 152 (1997); [Thompson v. Ark. Dep't of Human Servs.](#), 59 Ark. App. 141 (1997).

Time Constraints

If the court determines that the permanency goal is adoption at the PPH, DHS shall file a TPR petition within thirty (30) days of the PPH hearing. [Ark. Code Ann. § 9-27-338\(f\)](#).

Termination upheld where appellants argued that the court failed to have a permanency planning hearing within thirty (30) days of the order of no-reunification services. DHS provided notice and petitions of its intent to seek dependency-neglect adjudication, a no-reunification services order, and to terminate parental rights. DHS requested that it be allowed to set all the hearings on the same day. The trial court conducted all of these hearings on the same day, including a permanency planning hearing. Appellant was provided proper notice and due process. [Phillips v. Ark. Dep't of Human Servs.](#), 85 Ark. App. 450 (2004).

If court approves permanency goal to be adoption at the fifteenth-month hearing, DHS shall file TPR petition no later than the fifteenth month of the child's entry into foster care. Ark. Code Ann. § 9-27-359(c).

The court shall conduct and complete TPR hearing within ninety (90) days from the date the TPR petition is filed, unless continued for a good cause as articulated in the written order of the court. Ark. Code Ann. § 9-27-341(d).

The circuit court held a termination hearing where appellant was represented by appointed counsel. However, appellant moved for a continuance for a retained lawyer to represent her and on appeal argued that, in order to protect her parental rights, she should have been afforded a continuance to consult with another attorney. The court of appeals held that the circuit court did not abuse its discretion in denying appellant's motion for continuance because, during the approximate four-month period leading up to the termination hearing, another attorney did not enter an appearance, request a continuance, or appear before the circuit court. Appellant failed to demonstrate any prejudice and offered no explanation of how her case would have proceeded differently with a different attorney. [Hill v. Ark. Dep't of Human Servs., 2013 Ark. App. 760.](#)

Appellant argued that the trial court abused its discretion in denying her continuance. There was no abuse where the trial court considered appellant's arguments and determined the information sought would not impact its decision in the termination hearing. The appellant failed to show prejudice. The court allowed appellant to testify to the information she was attempting to enter at the termination hearing concerning her anticipated release date and that she was attempting to enter a drug rehabilitation program and the court considered this in its decision. The information that appellant sought to obtain corroborated her evidence and did not add to the testimony. [Sanderson v. Ark. Dep't of Human Servs., 2012 Ark. App. 481.](#)

Failure to hold the termination hearing within ninety (90) days of the filing of the petition does not deprive the trial court of jurisdiction. Reversal would not be appropriate absent a showing of prejudice resulting from the time delay. [Hill v. Ark. Dep't of Human Servs., 2012 Ark. App. 108.](#)

Appellant's sole point on appeal is that the trial court erred in denying her motion for a continuance. Counsel was appointed in June 2010 and the termination hearing was set in August 2010. Yet counsel waited until the afternoon before the hearing to seek a continuance based partly on lack of

preparedness. Failure to exercise diligence is a factor for the trial court to consider in determining whether to grant a continuance. Appellant could not show prejudice in going forward with the termination hearing prior to a criminal status hearing to schedule appellant's criminal trial, nor did the trial court rely on the duration of appellant's incarceration as ground for termination. The trial court considered the merits of the continuance and denied it because appellant could not demonstrate an advantage to a one-month continuance. [Chrihfield v. Ark. Dep't of Human Servs., 2011 Ark. App. 516.](#)

Appellant argued that the court abused its discretion in failing to grant her a continuance but failed to show why the denial of her continuance was an abuse of discretion or how she was prejudiced. [Renfro v. Ark. Dep't of Human Servs., 2011 Ark. App. 419.](#)

Appellant argued that circuit court erred in denying her motion for continuance because her denial precluded her from presenting evidence supporting that termination was not necessary. In deciding to grant a continuance the court should consider the following factors: the diligence of the movant; the probable effect of the testimony at trial; the likelihood of procuring the witnesses' attendance in the event of postponement; and the filing of an affidavit, stating not only what fact the witness would prove, but also that appellant believes them to be true. The court did not err. Appellant could have subpoenaed the witness in question or deposed the witness upon learning that the DHS witness would not be available. Further, the affidavit did not explain the evidence that appellant would prove to be true. [Jones-Lee v. Ark. Dep't of Human Servs., 2009 Ark. App. 160.](#)

TPR reversed and remanded. The court of appeals held that the trial court abused its discretion in denying appellant's motion for a continuance allowing her to relinquish her parental rights with consent for her mother to adopt. The court noted that a continuance would have accomplished permanency quicker for the child than proceeding with the hearing and that the child's sibling had already been adopted by appellant's mother. [Rhine v. Ark. Dep't of Human Servs., 101 Ark. App. 370 \(2008\).](#)

TPR affirmed. The appellant failed to appear for the termination hearing and later filed this appeal arguing, first, that the trial court erred in terminating his parental rights by default. Court found that the record revealed that, although the trial court granted a motion for default judgment, evidence was properly taken and reviewed at the hearing, and so a default judgment was not rendered. Court found that the decision to terminate did fully take into consideration the appellant's fundamental

rights as a parent and did safeguard the appellant's constitutional protections, as well as to determine the children's best interest. [Osborne v. Ark. Dep't of Human Servs., 98 Ark. App. 129 \(2007\).](#)

The trial court's findings constituted more than clear and convincing evidence to terminate parental rights. The only other adverse ruling of the trial court was the denial of the motion for a continuance. The granting or denial of a continuance is in the sound discretion of the trial court, and the court should consider the following factors:

- o The diligence of the movant;*
- o The probable effect of the testimony at trial;*
- o The likelihood of procuring the witnesses' attendance in the event of the postponement;*
- o The filing of an affidavit, stating not only what facts the witness would prove but what the appellant believes to be true; and*
- o The appellant must show prejudice from denial.* [Green v. State, 354 Ark. 210 \(2003\).](#)

The attorney requesting the continuance was not diligent because she did not request the continuance until the day of the trial and her client was not prejudiced because she was able to participate in the hearing via telephone. TPR affirmed and counsel's motion to withdraw granted. [Smith v. Ark. Dep't of Human Servs., 93 Ark. App. 395 \(2005\).](#)

A written order shall be filed by the court or by a party or party's counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner. [Ark. Code Ann. § 9-27-341\(e\).](#)

Appellant argued that the trial court's termination was clearly erroneous and that the order should be vacated because it was not filed within thirty (30) days. The court did not lose jurisdiction because the order was not filed within thirty (30) days from the date of the hearing. [Wade v. Ark. Dep't of Human Servs., 337 Ark. 353 \(1999\).](#)

After the TPR hearing, the court shall review the case at least every six (6) months, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile. [Ark. Code Ann. § 9-27-341\(f\).](#)

A permanency planning hearing is not a prerequisite to the filing of a TPR petition or for the court's consideration of a TPR petition. Ark. Code Ann. § 9-27-341(b)(1)(B).

The court shall not transfer any case in which a TPR petition has been filed unless the court has taken final action on the petition. Ark. Code Ann. § 9-27-307(b)(2).

Notice

The petitioner shall serve the petition as required under Rule 5 of the Arkansas Rules of Civil Procedure, except service shall be required under Rule 4 under the Rules of Civil Procedure if the:

- (1) Parent was not served under Rule 4 at the initiation of the proceeding;
- (2) Parent is not represented by an attorney;
- (3) Initiation of the proceeding was more than two years ago; or
- (4) Court orders service of the TPR petition as required under Rule 4. Ark. Code Ann. § 9-27-341(b)(2)(A).

Appellant argued that she lacked notice of the issues she had to defend against at the termination hearing because that the TPR petition was filed in June 2012 and most of the issues discussed occurred after August 2012. Failure to raise this issue below precludes appellate review. Permitting the introduction of proof on an issue not raised in the pleading constitutes an implied consent to trial on that issue. [Anthony v. Ark. Dep't of Human Servs., 2013 Ark. App. 556](#).

Appellant argued that the trial court erred in relying on a ground (support and contact) to terminate not pled in the petition violating his due process rights. Appellant is correct on this point. There was no notice and DHS never amended its petition or moved to conform the pleading to proof. The first time appellant was placed on notice of the ground was in the order terminating his rights. Appellant was denied the opportunity to develop a defense against the ground or to address this ground in closing arguments. Due process requires that appellant be afforded an opportunity to properly defend the allegations against him prior to terminating his parental rights and as such the court's reliance on this ground was clearly erroneous. [Jackson v. Ark. Dep't of Human Servs., 2013 Ark. App. 411](#).

Although the trial court made a mistake in finding that appellants' rights were involuntarily terminated as to five children, it was of no legal consequence. Appellant had five prior children terminated and only three

had been involuntarily terminated in 2010. The ground only requires prior involuntary termination as to a sibling of a child.

The appellate court also noted that due process requires notice to a parent and grounds must be pled in a petition to constitute a ground for termination. The court also cautioned the judiciary not to alter or disregard the language of termination grounds. If the facts do not fit the grounds as worded, it should not be used. [Jones v. Ark. Dep't of Human Servs.](#), 2011 Ark. App. 632.

Appellant did not challenge the TPR, but argued that DHS failed to meet the notice requirements of the Indian Child Welfare Act (ICWA). ICWA did not apply because it only applies in cases involving an Indian child under 25 U.S.C. §1903(4). In order to qualify the child or its parent must be a member of an Indian Tribe eligible to receive federal services. 25 U.S.C. § 1903(8). See 73 Fed. Reg. 18553-57 (Apr. 4, 2008); 72 Fed. Reg. 13648-52 (Mar. 22, 2007) for list of eligible tribes; [Masterson-Heard v. Ark. Dep't of Human Servs.](#), 2009 Ark. App. 623.

Reversed and remanded as to the appellant, putative father. Although, DHS recognized appellant as the father early in the case and even named him in the case plan, he was not named as a party as required by Arkansas Code Annotated section 9-27-311 or served a copy of the dependency-neglect petition as required by Arkansas Code Annotated section 9-27-312 or the Arkansas Rules of Civil Procedure. Appellant was not provided notice to hearings or offered any services.

Appellant was named as a defendant twenty-two months later when DHS filed a TPR petition alleging that he failed to establish paternity, provide support or maintain contact, and failed to comply with the case plan and court orders to which he was never a party. The court held that the basic due process guarantees were not provided and it was not harmless error. DHS has a duty to parents in dependency-neglect cases and that duty is not triggered by requests by parent. [Tuck v. Ark. Dep't of Human Servs.](#), 103 Ark. App. 263 (2008).

TPR affirmed. Appellant first argued that the trial court erred because the petitioner did not provide notice that a TPR hearing would be conducted at the adjudication hearing. However, the appellants did not preserve this issue for appeal because they did not appeal the adjudication order. [Sowell v. Ark. Dep't of Human Servs.](#), 96 Ark. App. 325 (2006).

Termination upheld where DHS provided notice and petitions of its intent to seek a dependency-neglect adjudication, a no-reunification services

order, and to terminate parental rights in the same day. Appellant was provided proper notice and due process. [Phillips v. Ark. Dep't of Human Servs., 85 Ark. App. 450 \(2004\).](#)

In addition to constructive notice, the petitioner shall check the putative father registry if the name or whereabouts of the putative father are unknown. [Ark. Code Ann. § 9-27-341\(b\)\(2\)\(B\).](#)

TPR Petition

Appellant argued that there were errors in the petition and that his rights cannot be terminated on provisions not pled. He argued that the only ground applicable was “other factors” and it was not checked on the courts form order. Although the trial court failed to check the blank for “other factors on the form order, it did circle parents within that section and it is clear that the court relied on this ground to terminate parental rights, which was pled in the petition. [Clements v. Arkansas Dept. of Human Services, 2013 Ark. App. 493.](#)

Appellant argued that the trial court erred in relying on a ground (support and contact) to terminate not pled in the petition violating his due process rights. Appellant is correct on this point. There was no notice and DHS never amended its petition or moved to conform the pleading to proof. The first time appellant was placed on notice of the ground was in the order terminating his rights. Appellant was denied the opportunity to develop a defense against the ground or to address this ground in closing arguments. Due process requires that appellant be afforded an opportunity to properly defend the allegations against him prior to terminating his parental rights and as such the court’s reliance on this ground was clearly erroneous. [Jackson v. Ark. Dep’t of Human Servs., 2013 Ark. App. 411.](#)

TPR is a remedy available only to DHS or the attorney ad litem. [Ark. Code Ann. § 9-27-341\(a\)\(1\)\(A\).](#)

Termination of parental rights is a remedy available only to DHS (and to an attorney ad litem beginning in 1997 after case decided) and not to private litigants; therefore, the right of dismissal accrues to DHS as the petitioner, and not to a parent. [M.T. v. Ark. Dep’t of Human Servs., 58 Ark. App. 302 \(1997\).](#)

The court may consider a TPR petition if there is an appropriate permanency placement plan for the juvenile. [Ark. Code Ann. § 9-27-341\(b\)\(1\)\(A\).](#)

The termination statute does not require that termination of parental rights be a predicate to permanent placement, but only that DHS shall

attempt to clear the juvenile for permanent placement when parental rights are terminated. [M.T. v. Ark. Dep't of Human Servs., 58 Ark. App. 302 \(1997\).](#)

Burden of Proof

A TPR order shall be based upon a finding by clear and convincing evidence. [Ark. Code Ann. § 9-27-341\(b\)\(3\); Ark. Code Ann. § 9-27-325\(h\)\(2\)\(c\).](#)

Appellant argued that the trial court failed to find that the TPR had been proven by clear and convincing evidence. The court's order was sufficient where it stated its finding was pursuant to the statute that cited the burden of proof. [Edwards v. Ark. Dep't of Human Servs., 2010 Ark. App. 739.](#)

Appellant argued that DHS failed to meet the burden of proof required by the Indian Child Welfare Act (ICWA). The trial court correctly found that DHS met all the necessary elements of the case beyond a reasonable doubt as required by ICWA. [Burks v. Ark. Dep't of Human Servs., 76 Ark. App. 71 \(2001\).](#)

Grounds for termination of parental rights must be proven by clear and convincing evidence, and the question on appeal is whether the chancellor's finding that the disputed fact was proved was clearly erroneous. Due regard is given to the trial court's ability to judge the credibility of witnesses. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made based on the entire evidence. [Posey v. Ark. Dep't of Human Servs., 370 Ark. 500 \(2007\); Moore v. Ark. Dep't of Human Servs., 333 Ark. 288 \(1998\); Crawford v. Ark. Dep't of Human Servs., 330 Ark. 152 \(1997\); Conn v. Ark. Dep't of Human Servs., 79 Ark. App. 195 \(2002\); Donna S. v. Ark. Dep't of Human Servs., 61 Ark. App. 235 \(1998\); Thompson v. Ark. Dep't of Human Servs., 59 Ark. App. 141 \(1997\); M.T. v. Ark. Dep't of Human Servs., 58 Ark. App. 302 \(1997\).](#)

The U.S. Supreme Court held that before a state may sever the rights of parents in their natural child, Due Process requires that the state support its allegations by at least clear and convincing evidence. [Santosky v. Kramer, 455 U.S. 745 \(1982\).](#)

TPR Evidence

The Rules of Evidence apply. [Ark. Code Ann. § 9-27-325\(e\)\(1\).](#)

Appellant argued that the circuit court erred in admitting a counselor's testimony from a prior review hearing that it may have contained hearsay.

Yet, on appeal, appellant argued that the testimony was too remote and was not given in a proceeding applying the clear and convincing evidence standard. A party cannot change their argument on appeal and is bound to the scope of the argument made to the circuit court. Appellant also failed to show why she is entitled to relief or how she was prejudiced by this testimony. [Ball v. Ark. Dep't of Human Servs., 2011 Ark. App. 307.](#)

Appellant argued that the circuit court erred in admitting phone conversations between Alamo and women at the ministry while Alamo was in jail. Appellant is correct that the recordings did not qualify as business records for the purposes of Rule 803(6). However, the recordings were admissible because they were not hearsay. The conversations were not offered for the truth of the matter asserted but to illustrate Alamo's continued control over the ministry. [Krantz v. Ark. Dep't of Human Servs., 2011 Ark. 185](#); [Seago v. Ark. Dep't of Human Servs., 2011 Ark. 184](#); [Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182](#); [Parrish v. Ark. Dep't of Human Servs., 2011 Ark. 179.](#)

It is in the juvenile's best interest, including consideration of the following factors:

- (1) The likelihood the juvenile will be adopted if the TPR petition is granted; and
- (2) The potential harm, specifically addressing the effect of the health and safety of the juvenile, caused by returning the child to the custody of the parents or the putative parent; and [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(A\)\(i-ii\).](#)

The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights. [Ark. Code Ann. § 9-27-341\(a\)\(4\)\(B\).](#)

Constitutional Issues

There were five appeals affirming the termination of parental rights in cases that resulted in removing children from the Tony Alamo Christian Ministries (TACM). The first two arguments in each case are set forth in detail in the Myers decision. Appellant first challenged that the case plan requiring her to live and work outside of the TACM unduly burdened her constitutional right to free exercise of religion requiring a strict-scrutiny standard. The court found that these requirements were neutral and only incidentally affected appellant's exercise of her religion. The requirement was to provide a safe environment for her children apart from TACM,

which the trial court found was and continued to be an unsafe environment. Requiring parents to seek safe and secure housing can be applied to any parent seeking to regain custody regardless of religious practices and does not discriminate against a religious belief or regulate or prohibit conduct because it is undertaken for religious reasons. The Free Exercise Clause does not pertain to this case and the circuit court did not err in rejecting appellant's constitutional challenge. The court overruled Thorne, 2010 Ark 443, to the extent that a strict-scrutiny analysis was applied because there was no constitutional infringement. [Reid v. Ark. Dep't of Human Servs., 2011 Ark. 187](#); [Krantz v. Ark. Dep't of Human Servs., 2011 Ark.185](#); [Seago v. Ark. Dep't of Human Servs., 2011 Ark. 184](#); [Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182](#); [Parrish v. Ark. Dep't of Human Servs., 2011 Ark. 182](#).

Relative Placement

Appellants argued that the trial court erred in terminating their parental rights because the least restrictive alternative was to place custody of their child with her maternal grandmother citing Arkansas Code Annotated section 9-27-355. However, this argument has previously been rejected and is not relevant to termination proceedings. Appellants appealed from a termination order, not a permanency planning order. [Ogden v. Ark. Dept. of Human Servs., 2012 Ark. App. 577](#).

Appellants argued that the trial court erred in terminating their parental rights because the least restrictive alternative was to place custody of their child to be placed with the paternal grandparents, citing Arkansas Code Annotated 9-27-355. However, this argument citing preferential placement with relatives has previously been rejected and we will not overrule those decisions. In addition, a home study was conducted on the grandparent's home in April of 2011 and was not approved. The grandmother also withdrew her home as a potential placement as a result of threats and conflicts with her son. [Lowell v. Ark. Dep't of Human Servs., 2012 Ark. App. 547](#).

Appellant's argument that the termination was not in the best interest because there was a lesser restrictive alternative in placement with the paternal grandmother failed. Appellant cited Arkansas Code Annotated §9-27-355(c)(1) to support her position in favor of relative placement. However, the Supreme Court has already held that this statute refers to the initial placement of a juvenile, not termination. Appellant also argued the exception to termination at Arkansas Code Annotated § 9-27-338 when a relative is caring for a juvenile and the court finding it is in the child's best

interest. However, the children were not being cared for by a relative and the home study had been performed on the relative had been denied.

[Henderson v Ark. Dep't of Human Servs., 2012 Ark. App. 430.](#)

Appellant's argument that the termination was not in the best interest since the children were being cared for by a relative failed. She cited the permanency planning statute. However, appellant did not appeal the permanency planning order and stipulated to the change in the case goal to adoption. The trial court considered permanent custody but found the children needed a permanent home that adoption could provide. [Davis v. Ark. Dep't of Human Servs., 2012 Ark. App. 419.](#)

Appellant argued that the trial court erred in declining to hear testimony concerning placement of her children with their maternal grandmother because it was relevant to the court's consideration of best interest. However, during the TPR hearing appellant only asked the court to consider the grandmother's home study that the court had previously ordered. Appellant is bound by the scope of her argument to the trial court on appeal. The appellate court stated that even if appellant's argument had been preserved the trial court would be upheld. The trial court's ruling was an evidentiary ruling on whether to consider the maternal grandmother's home study. Trial courts have broad discretion in evidentiary rulings and will not be overturned unless there is a manifest abuse of discretion. [Andrews v. Ark. Dep't of Human Servs., 2012 Ark. App. 22.](#)

Appellants argued that the trial court's decision to limit Null's (maternal grandfather) participation in the termination proceeding violated his due process rights and impacted their parental rights. It was Null's burden to show how his due process rights were violated and there was no evidence or argument justifying how or why this burden should or could be shifted to a third party. Appellants failed to make an objection or argument of the alleged prejudice or that they suffered harm by the court limiting his role in the proceeding. [New v. Ark. Dep't of Human Servs., 2011 Ark. App. 604.](#)

Adoptability

Appellants argued that the circuit court erred because DHS did not present testimony of the children's adoptability. While no one testified that the children were adoptable, the circuit court clearly considered the likelihood that the children would be adopted, as they lived with their maternal grandmother. Because the record demonstrated the circuit court considered the likelihood of adoption as part of its best-interest analysis,

the circuit court affirmed on this point. [Smith v. Ark. Dep't of Human Servs.](#), 2013 Ark. App. 753.

Appellant argued that it was not in her child's best interest to terminate because it is unlikely that he will be adopted in the near future. The court stated that adoption is not an essential element of a termination and is only a factor to determine best interest. The trial court did not err in finding best interest where there was evidence of the child's traumatization and great fear of the appellant. [McDaniel v. Ark. Dep't of Human Servs.](#), 2013 Ark. App. 263.

Appellant argued there was insufficient evidence of adoptability because the adoption specialist admitted that DHS might have to recruit a family and she had not placed a child with all of the behavior problems that one of her children had. Testimony from a caseworker or adoption specialist that children are adoptable is sufficient and the adoption specialist testified that there had already been an inquiry about adoption of appellant's children. [Lowry v. Ark. Dep't of Human Servs.](#), 2012 Ark. App. 478.

Appellant's argument that there was no evidence that the children were adoptable is without merit. The case worker testified that appellant's children were adoptable and the court considered that in making its best interest determination. [Thompson v. Ark. Dep't of Human Servs.](#), 2012 Ark. App. 124.

When an appellant fails to attack the trial court's independent, alternative basis for a ruling it is not subject to reversal. Appellant argued that the court's finding concerning the children's adoptability was insufficient. However, there was evidence by the adoption specialist that the children were adoptable and that she had been able to find adoptive parents for sibling groups. The court had evidence to make its finding. [Bayron v. Ark. Dep't of Human Servs.](#), 2012 Ark. App. 75.

The court found a high likelihood that the children would be adopted. Appellant challenged the court's finding, specifically as to the testimony concerning their adoptability and that her children did not consent to be adopted. Failure to object to the admission of the testimony or raise the consent issue with the trial court prevents review upon appeal. [Brabon v. Ark. Dep't of Human Servs.](#), 2012 Ark. App. 2.

The trial court's finding that termination of parental rights was in the children's best interest was not clearly erroneous. Although the children had behavior problems, there was evidence supporting the likelihood of

adoption, including possibility of an adoptive placement with an aunt. [Threadgill v. Ark. Dep't of Human Servs., 2011 Ark.App. 642.](#)

Appellant's sole argument on appeal is that the trial court erred in denying placement of his six children with relatives pursuant to the Interstate Compact Placement for Children (ICPC). He argued that once home studies were completed the court had to place his children with relatives. However, appellant failed to raise the issue of ICPC compliance with the trial court and waived his argument on appeal. [Chafin v. Ark. Dep't of Human Servs., 2011 Ark. App. 496.](#)

Appellant argued that the termination was in error because there was no testimony as to adoption of her children and to obtain the consent of her father and stepmother to adopt the children. At the TPR hearing the DHS attorney provided information about two foster families that had expressed interest in adoption. The attorney ad litem asked the court to hold his ruling in abeyance on the issue of adoption. At a subsequent hearing a report was introduced and the trial judge based his ruling on the report of the proposed adoptive home. The court noted statements and arguments by counsel are not evidence and the preference for DHS to resent all available evidence to the trial court. [Renfro v. Ark. Dep't of Human Servs., 2011 Ark. App. 419.](#)

Appellant challenged that adoption was an appropriate permanency plan for her children and argued that her oldest child did not want to lose all contact with her even though he did not want to be reunited and that the other children did not understand the finality of termination. The appellate court noted that while a circuit court may consider a child's wishes to be adopted at termination, the court does not need to obtain the child's consent at the termination proceeding. The guiding principal is the child's best interest and no challenge was made to this point on appeal. Appellant's final argument that the court was unable to properly evaluate her home without an ICPC study is without merit. An ICPC study was completed and did not recommend placement. [Ball v. Ark. Dep't of Human Servs., 2011 Ark. App. 307.](#)

Appellant only challenged the best interest finding as to her child's adoptability arguing that the evidence of her child's adoptability was weak when compared to the evidence of her child's special needs. The appellate court noted that the trial court's obligation in its best interest analysis is to consider the likelihood that children will be adopted and that factor does not have to be proven by clear and convincing evidence. The potential harm aspect of the best interest analysis favored termination so that the

limited evidence on adoptability makes no legal difference. [Dority v. Ark. Dep't of Human Servs., 2011 Ark. App. 295.](#)

Appellant challenged the best interest finding arguing that there was no credible evidence that his five children were adoptable. However, the circuit court had evidence to consider the likelihood that the children were adoptable and made such a finding. [Woodall v. Ark. Dep't of Human Servs., 2011 Ark. App. 247.](#)

The trial court's finding that termination was in the child's best interest was clearly erroneous where the child had been placed with his maternal grandparents and where the caseworker testified his placement was excellent. There was no evidence that the parents had abused or harmed the child or would be a threat in the future. The appellate court noted that maternal grandmother stated that it was in the child's best interest to have continued contact with his parents. Reversed. [Cranford v. Ark. Dep't of Human Servs., 2011 Ark. App. 211.](#)

Appellant challenged the termination arguing that permanency had already been achieved through permanency with a relative. Appellant argued that the Permanency Planning and Fifteen Month Statue provide for an exception to termination if the juvenile is being cared for by a relative. However, appellant failed to raise this issue at the Permanency Planning Hearing where the goal was changed and waived his argument for appeal. [Velazquez v. Ark. Dept. of Human Servs., 2011 Ark. App. 168.](#)

The only issue on appeal was whether the trial court properly considered the child's adoptability in its best interest analysis. Appellant argued that the evidence was not specific enough as to who would adopt the children. The appellate court noted that while the trial court must find that TPR is in the child's best interest by clear and convincing evidence, the court does not have to find that every factor is established by this burden. The trial court found that the children were likely to be adopted, there was a family waiting to adopt them, and that the likelihood of adoption was very high. [Clingenpeel v. Ark. Dep' of Human Servs., 2011 Ark. App. 84.](#)

Appellant argued that the court erred in its best interest finding. The trial court made a specific finding that the child was adoptable and there was evidence that the child was adoptable and that the foster parents were interested in adopting. The evidence also supported the trial court's finding of potential harm where appellant failed to overcome her drug addiction and failed to maintain stable housing. [Welch v. Ark. Dep't of Human Servs., 2010 Ark. App. 798.](#)

Appellant argued that the court erred in its best interest finding that the child was adoptable. There was sufficient evidence by the caseworker who testified that there were prospective adoptive parents for the children if rights were terminated and that there had already been an inquiry as to one of the children. [Smith v. Ark. Dep't of Human Servs., 2010 Ark. App. 747.](#)

The court noted that DHS failed to provide evidence to the court on the likelihood of the childrens' adoption in assessing the children's best interest. Yet the trial court made the statutorily required finding without the benefit of a knowledgeable witness. The appellate court cautioned DHS that it has the burden of proof to present evidence on the statutorily-mandated findings, but noted that an appeal on this point would not be supported. [Dean v. Ark. Dep't of Human Servs., 2009 Ark. App. 198.](#)

TPR affirmed based upon clear and convincing evidence that the circuit court found that the termination was in the best interest of the children. Evidence included a strong likelihood that the children would be adopted and that there was potential harm to the children if they remained in their father's custody. [Sturdivant v. Ark. Dep't of Human Servs., 99 Ark. App. 393 \(2007\).](#)

TPR upheld based on clear and convincing evidence where trial court found that termination was in the children's best interests and that the children were adoptable. Appellant argued that the court erred in finding that the children were likely to be adopted since they were 11 and 15 years old and had emotional problems. Appellant argued that there are documents that support her claim, but they were not abstracted. The caseworker testified at the termination hearing that she believed that the children would be adopted and that there was a possibility for them to be adopted together. [Cobbs v. Ark. Dep't of Human Servs., 87 Ark. App. 188 \(2004\).](#)

The trial court did not improperly consider the child's wishes to be adopted by her foster parents as a controlling factor in the decision to TPR. [Jefferson v. Ark. Dep't of Human Servs., 356 Ark. 647 \(2004\).](#)

Potential Harm - [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(A\)\(ii\).](#)

There was clear evidence as to potential harm where appellant mom did not have any contact with DHS for five months and failed to comply with the court's orders. Appellant dad also continued to have unstable relationships, continued drug use nine months into the case, and

associated with drug users. [Sellers v. Ark. Dep't of Human Servs., 2013 Ark. App. 417.](#)

In this second TPR hearing regarding appellant, he argued that the trial court erred in finding that it was in his child's best interest to terminate parental rights because DHS failed to show that returning S.A. to his care would be potentially harmful. Evidence supported the trial court's decision including, that appellant did not have stable housing; he lived with his sister and her husband who had drug issues; he had outstanding felony warrants in Arizona that he had not dealt with; and he did not have transportation since his driver's license had been suspended as a result of a DUI. [Austin v. Ark. Dep't of Human Servs., 2013 Ark. App. 406.](#)

There was sufficient evidence as to potential harm where appellant mom after 24 months, including a trial placement, failed to comply with court orders, maintain contact with DHS and get counseling for her children. Appellant dad also had a sex abuse finding against his minor daughter, was a convicted felon for trading pseudoephedrine and methamphetamine, and tested positive for drugs during the case. The trial court made specific findings that the children would suffer potential harm if returned and neither parent was ready to take custody of the five children after two years of services. [Madison v. Ark. Dep't of Human Servs., 2013 Ark. App. 368.](#)

There was sufficient evidence to support trial court's finding that the termination was in their children's best interest after an 11 year history with DHS. The court properly considered potential harm to J.S where evidence showed that five of appellant's children had been terminated due to appellant's methamphetamine use that she continued to use methamphetamine while she was pregnant with J.S. and after he was placed in DHS custody. Although appellant had remained sober for five months prior to the termination hearing her rehabilitation was still a work in progress as noted by her past periods of sobriety only to return to using meth. [Porter v. Ark. Dep't of Human Servs., 2013 Ark. App. 299.](#)

There was sufficient evidence as to potential harm where appellant did not have a home, still used drugs, failed to complete parenting or drug treatment, maintain contact with her children, and did not have stable employment. [Strong v. Ark. Dep't of Human Servs., 2013 Ark. App. 278.](#)

There was sufficient evidence to support trial court's finding that the termination was in their children's best interest after a six year history with DHS, including income and housing instability, mental illness (including failure to take medication), and alcohol abuse. The mother also had her rights terminated to four other children in another state and the

father although aware of his wife's mental health issues failed to adequately understand the harm of leaving the children unsupervised in her care. [Drake v. Ark. Dep't of Human Servs., 2013 Ark. App. 274.](#)

Appellant argued that the trial court failed to consider whether her child's health and safety would be at risk if returned to her. Potential harm is a factor in the best interest analysis and the court is not required to identify a potential harm or to find that actual harm would result if returned to the parent. Appellant failed to preserve her argument for appeal because she did not object below. However, the court noted that even if appellant preserved the argument for appeal the circuit court would be affirmed because the court considered potential harm the child would face if returned to the parent in its order and letter ruling presented at the final hearing. [Cushman v. Ark. Dep't of Human Servs., 2013 Ark. App. 3.](#)

Appellant is a minor mother in foster care who had her parental rights terminated. She argued that the court failed to provide her attorney ad litem. The appellate court noted the statutory right for the court to appoint an attorney ad litem, but this issue was not raised below and the court noted that in the case before the circuit court the daughter, not appellant was entitled to an attorney ad litem. Appellant challenged the best interest finding as to potential harm. There was evidence that appellant's aggressive and oppositional behavior could potentially harm the health and safety of her daughter. [B.H.1 v. Ark. Dep't of Human Servs., 2012 Ark. App. 532.](#)

There was sufficient evidence that children had been out of the home for more than a year and she failed to remedy the conditions which caused their removal. Evidence demonstrated that he did not have adequate housing to meet the children's basic needs, her employment was inconsistent and insufficient, her visitation with her children was sporadic and her failure to visit was disruptive. [Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502.](#)

Appellant argued that the trial court erred in finding that she would subject her children to potential harm if they were returned by failing to separate her from the acts of the father of her children. She argued that her therapist's testimony supported her claim. The trial court was not required to believe the testimony of the appellant or her therapist. The trial court from the beginning of the case stressed the importance of knowing how appellant's young child was physically abused and there was evidence to support the court not finding appellant credible. The lack of credibility was related to her ability to protect her children from further harm. [Apelu v. Ark. Dep't of Human Servs., 2012 Ark. App. 480.](#)

Appellant only contested that DHS failed to show that termination was in her children's best interest because there was insufficient evidence that she posed any harm to their return home. There was sufficient evidence of a risk of potential harm where her children had spent seventy-five percent of their young lives in foster care. Appellant was unable to demonstrate once she was released from jail how she would provide a stable home or sufficient income. There was evidence as to her poor judgment, including maintaining a drug premise, drug related offenses, choosing poor relationships with men and not taking advantage of opportunities that gave rise to why her children were removed. [Torres v. Ark. Dept. of Human Servs., 2012 Ark. App. 423.](#)

Appellant argued that there was insufficient evidence that she posed any harm to her children's return home. The trial court did not err and the potential harm was evident. Appellant did not demonstrate she could provide a stable home or sufficient income. The trial court found her credibility lacking and she did not demonstrate good decision making in her relationships or roommates. [Reed v Ark. Dep't of Human Servs., 2012 Ark. App. 369.](#)

Appellant (dad) argued that there was insufficient evidence to support the best interest finding specifically that C.J.'s health and safety were at risk. There was no error were the court did not find appellant credible and there was evidence of domestic abuse, drug and alcohol abuse, and mental health issues. The trial court also had concerns about appellants' capability to understand or care for the child's significant needs. [Pratt v. Ark. Dep't of Human Servs., 2012 Ark. App. 399.](#)

Appellant argued that there was insufficient evidence to support the trial court's finding that termination of parental rights was in the best interest of the child. Appellant failed to maintain stable and appropriate housing, employment, income and transportation. The evidence clearly showed appellant lacked stability needed by the juvenile. There was also evidence that he missed telephone visits with his child and his visits were often inappropriate. [Hall v. Ark. Dep't of Human Servs., 2012 Ark. App. 245.](#)

The trial court's finding that termination of parental rights was in the children's best interest was clearly erroneous. Evidence showed appellant worked hard upon release from jail by maintaining a stable job and housing, staying off drugs, and demonstrating his commitment to his child, and complying with court orders, except for an occasional moderate consumption of alcohol and three unexcused missed visitations. There was no evidence of any harm or real risk of harm by appellant's slight lapse of

judgment when the quantum of evidence favored reunification. [Rhine v. Ark. Dep't of Human Servs., 2011 Ark. App. 649.](#)

Evidence of potential harm if returned to appellant included appellant's continued drug use, pending criminal charges, and evidence of her inability to parent her children safely and independently. [Threadgill v. Ark. Dep't of Human Servs., 2011 Ark. App. 642.](#)

Appellants challenged the court's best interest finding that there was any potential harm in returning the children to them. The trial court did not err and there was evidence that the mother failed to seek dental care when needed, appellants failed to maintain stability needed by the children, and that the children regressed in their behavior upon reinstitution of visitation with the parents. [Holderfield v. Ark. Dep't of Human Servs., 2011 Ark. App. 534.](#)

Appellant argued that there was insufficient evidence as to the circuit court's finding of potential harm of continuing contact with appellant. The court of appeals affirmed by memorandum opinion stating that there was a "quantum of evidence and findings to support the order." [Fraizer v. Ark. Dep't of Human Servs., 2011 Ark. App. 471.](#)

Appellants had their rights terminated as to their six children, L.K., A.K., A.K.2, S.K., C.K. and R.K. Appellants challenged the circuit court best interest finding as to potential harm. The court found that there was ample evidence that Alamo still controlled the daily affairs of the TACM and furnished the appellants with housing, transportation, and money to meet their daily needs. The appellants did not consider Alamo's actions, past or present to be a danger to their children. Although appellants testified that they would not permit abuse of their children, the circuit court found that their testimony was not credible. Due deference is given to the trial judge in assessing credibility of witnesses. [Krantz v. Ark. Dep't of Human Servs., 2011 Ark. 185.](#)

There was sufficient evidence that termination was in the child's best interest, including the potential harm of being kept in the "limbo land of foster care." [Porter v. Ark. Dep't of Human Servs., 2010 Ark. App. 680.](#)

The trial court did not err in finding that termination was in the children's best interest and the court noted evidence of the appellants' chronic instability to the point that neither parent had progressed beyond supervised visitation at the time of the termination hearing. [Tucker v. Ark. Dep't of Human Servs., 2011 Ark. App. 430.](#)

As to best interest, appellant argued that if she were able to live in a stable environment under the supervision of another adult, TPR would not be necessary. The evidence did not support appellant's ability to provide a stable environment for her child. [L.W. v. Ark. Dep't of Human Servs., 2011 Ark. App. 44.](#)

Appellant challenged that the TPR was in his child's best interest and that it was contrary to law because his child remained in his mother's custody. The appellate court found that appellant's children needed permanency in the form of an irrevocable break from his violence. The court further noted that the children would not be returned to the "family home" as envisioned by the statute because the children would not be returned to the "family home" as it once existed -- where appellant was once a member of the family. The case was distinguished from Caldwell because of appellant's unrelenting violence before and after the case began. Finally, appellant argued that TPR was not in the child's best interest because the circuit court must consider the likelihood of adoption and potential harm. The appellate court found that likelihood of adoption and potential harm do not have to be proved by clear and convincing evidence. They are factors for the court to consider. While adoptability is not likely since they are in the custody of their mother, the potential harm factor weighs heavily in favor of termination due to appellant's violence. [Hayes v. Ark. Dep't of Human Servs., 2011 Ark. App. 21.](#)

Appellant challenged the TPR finding as to the child's best interest specifically that returning the children to her held a potential danger for them. She argued that her visitation posed no danger to her children. The court of appeals found that the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. The court also noted that there was a huge difference between visiting children and being totally responsible for them. [Ridley v. Ark. Dep't of Human Servs., 2009 Ark. App. 618.](#)

Appellant challenged the TPR finding as to the child's best interest specifically that returning the child to him would subject his child to potential harm and in finding grounds existed to terminate his rights. The court of appeals found that the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. [Byers v. Ark. Dep't of Human Servs., 2009 Ark. App. 581.](#)

Termination of parental rights was affirmed as to appellant's three children. Appellant argued that the circuit court erred by failing to obtain the two older children's consent to adoption and to finding that the termination was in the children's best interest. Appellant argued that the

court erred in not seeking the consent of the two older children regarding adoption, pursuant to Arkansas Code Annotated section 9-9-206(a)(5). The appellate court found that Arkansas Code Annotated section 9-9-206(a)(5) does not apply in termination proceedings in dependency-neglect cases. The court noted that even when this statute is applicable, the court has the authority to dispense with the minor's consent, if the court finds the adoption is in the child's best interest.

The circuit court did not err in finding that appellant's conduct posed a potential harm to the children and that the termination was in the children's best interest. Appellant admitted her inability to regain custody of her children at the termination hearing and could not predict when her situation would improve. [Childress v. Ark. Dep't of Human Servs., 2009 Ark. App. 322.](#)

Appellants argued that there was insufficient evidence to support a finding of potential harm as to the court's finding of best interest. The trial court was required to consider the potential health and safety of the children that might result from continued contact with the parents. The trial court was not clearly erroneous when it looked at past behavior as a predictor of potential harm, and this is one of the many factors that a court considers in a best interest analysis. [Dowdy v. Ark. Dep't of Human Servs., 2009 Ark. App. 180.](#)

Appellant argued that trial court failed to consider the potential harm if the children were returned to her or alternatively that the evidence did not support that the children would be harmed if returned, and that the court never specified what clear and convincing evidence supported its order. The appellate court found no merit in any of appellant's arguments and that the termination was in the children's best interest. The appellate court found that the circuit court had summarized its previous findings based on the evidence and that there is no statutory requirement that every factor considered in be established by clear and convincing evidence, but that after a review of all the factors the evidence must be clear and convincing that it is in the child's best interest. [Jones-Lee v. Ark. Dep't of Human Servs., 2009 Ark. App. 160.](#)

TPR affirmed by the court of appeals. Appellant argued that DHS failed to show potential harm to the children if they were returned home. The children had been out of the home for more than one year, and the conditions that caused removal had not been remedied. Mom failed to address environmental issues, continued to have inappropriate discussions with her children about the case, and did not accept responsibility for protecting her children from their father. The father was unable to care

for the children due to his abusive behavior and unwillingness to admit fault. Additionally, he had not dealt with his anger issues and was incarcerated at the time of the hearing. The appellate court affirmed on the basis of sufficiency of the evidence as to the children's best interest and on termination grounds. [Lee v. Ark. Dep't of Human Servs., 102 Ark. App. 337 \(2008\).](#)

TPR reversed because parties stipulated to child's best interest and no evidence presented to the court. Arkansas Code Annotated section 9-27-341(b) requires that an order terminating parental rights must be based upon clear and convincing evidence that it is in the child's best interest and that one of the TPR grounds are proven. Although the trial court's order recited that it was contrary to the child's best interest to return home and that the TPR was in her best interest, there was no evidence presented that would support such a finding. The only evidence submitted at the hearing was a stipulation concerning an earlier termination of a sibling. Since only one of the two grounds of the statute was proven, the decision to terminate parental rights was clearly erroneous. [Conn v. Ark. Dep't of Human Servs., 79 Ark. App. 195 \(2002\).](#)

TPR upheld circuit court finding of best interest with strong evidence that the children would be adopted and that there was potential harm to the children if they remained in their father's custody. [Posey v. Ark. Dep't of Human Servs., 370 Ark. 500 \(2007\).](#)

TPR upheld circuit court's finding where trial court made specific findings of fact of the child's best interest including that return home would be harmful, that the child was very adoptable, and he was stable and thriving in his foster home. The trial court also noted the six-year history with this family and that the child, age 11, expressed his wishes to not be returned to or have any contact with his father. [Latham v. Ark. Dep't of Health & Human Servs., 99 Ark. App. 25 \(2007\).](#)

The court of appeals relied on [Conn v. Arkansas Dep't of Human Servs., 79 Ark. App. 195, 85 S.W.3d 558 \(2002\)](#), holding that the trial court erred in finding that it was in the child's best interest to find that prior termination was a sufficient ground for TPR. [Ivers v Ark. Dep't of Human Servs., 98 Ark. App. 57 \(2007\).](#)

Note: Under the Adoption Safe Families Act (ASFA), effective November 1997, an involuntary termination as to another sibling is a ground to fast track a case and a ground for termination of parental rights. This federal law has been adopted into state law as well. Factors of best interest are separate from TPR grounds. Best interest and a TPR ground must be

proven by clear and convincing evidence to terminate best interest. In Conn, the trial court was reversed for allowing a stipulation as to the child's best interest. In Conn, the appellate court stated that the trial court must be presented evidence and make findings as to the best interest of the child in a termination hearing.

(3) One or more of the following grounds:

(A) **Failure to remedy**

The juvenile has been adjudicated dependent-neglected and has continued outside of the custody of the parent for twelve (12) months and, despite a meaningful effort by DHS to rehabilitate the home and correct conditions that caused removal, those conditions have not been remedied by the parent. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a).

It is not necessary that the twelve-month period referenced in this subdivision immediately precede the filing of the petition for TPR or that it be for twelve (12) consecutive months. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(b).

Failure to Remedy Not Applicable

Appellant argued there was insufficient evidence to support the failure to remedy the conditions that caused removal ground because his conduct did not cause the removal. The Appellate Court reversed and remanded and declined to accept DHS's argument that appellant had been the cause of removal in a prior dependency-neglect case that had been closed. While a trial court may use a parent's actions from previous closed proceedings, it cannot be used as the sole ground when the previous proceedings were closed and ended in reunification. [Williams v. Ark. Dep't of Human Servs., 2013 Ark. App. 622.](#)

Appellant argued the twelve-month remedy ground did not apply to him because his conduct did not cause the removal. DHS argued that the children were removed due to the mother's drug use and there was no appropriate caregiver. His absence also caused the removal. The court found that the removal was a result of the mother's drug use and appellant's absence was not the cause of removal; that the statute was not applicable to him to support termination. [Jackson v. Ark. Dep't of Human Servs., 2013 Ark. App. 411.](#)

Appellant argued insufficient evidence because the court relied on a ground that did not apply to him since the children were not removed from him and he was not responsible for the conditions that caused removal.

Evidence showed the children could not be placed with him due to his own issues with drug use, stable housing, and employment. The appellate court reversed because the ground alleged in the petition was not applicable to appellant. [Lewis v. Arkansas Dep't of Human Servs., 2012 Ark. App. 154.](#)

Failure to Remedy

Appellants argued that the circuit court erred in terminating their rights because DHS made no effort to assist them in reunification, and there was reasonable expectation that, given additional time, they could have obtained stability and the ability to care adequately for their children. The appellate court held that DHS's efforts to provide meaningful efforts to rehabilitate the parents was not required and appellants' incarceration was clear and convincing evidence to support the alternative ground for termination. [Smith v. Ark. Dep't of Human Servs., 2013 Ark. App. 753.](#)

Appellant's sole argument on appeal was that there was insufficient evidence to support the termination of her parental rights. The court of appeals held that, because of mom's long history with DHS and her failure to demonstrate that she could provide a suitable and safe home for her children, the circuit court did not clearly err in finding that termination of her parental rights was in the best interest of the children. [Mitchell v. Ark. Dep't of Human Servs., 2013 Ark. App. 715.](#)

Appellant argued that the court erred in finding that she failed to remedy the conditions that caused removal which concerned the safety of her infant due to her drug usage. Even with three drug treatment referrals, appellant delayed drug treatment until the eleventh hour and was arrested for drugs being sold out of her apartment two months prior to the termination hearing. The trial court is in the best position to weigh the evidence and determine the credibility of the witnesses. [McBride v. Ark. Dep't of Human Servs., 2013 Ark. App. 566.](#)

Appellant (mom) argued that she was making progress despite her relapses. However, evidence that a parent makes progress as a termination is imminent will not outweigh other evidence demonstrating a failure to comply and remedy the situation that caused the children to be removed. Appellant (dad) is precluded from arguing that he should have been given transportation to a drug assessment that he failed to attend because previous orders finding reasonable efforts were not appealed. There was also evidence that he had transportation, he never requested transportation and he continued to use illegal drugs throughout the case. [Emmons v. Ark. Dep't of Human Servs., 2013 Ark. App. 541.](#)

There was sufficient evidence as to the twelve-month remedy where evidence demonstrated that his child was removed as a result of his drug use and that he continued to have drug issues, and failed to have stable housing or employment. [Austin v. Ark. Dep't of Human Servs., 2013 Ark. App. 406.](#)

There was sufficient evidence to support termination where a three year old child was removed from his parents as a result of their manufacturing methamphetamine in their home and the child was so aggressive that he hurt himself and others. The evidence that appellant either abused or failed to protect the child was overwhelming and there was evidence that the child could never be returned to her care. [McDaniel v. Ark. Dep't of Human Servs., 2013 Ark. App. 263.](#)

Appellants argued that the environmental neglect did not threaten the physical health and safety of their children. Yet, there was evidence at the termination hearing of continuing problems with raw sewage, mold, and trash. The court's order was not clearly erroneous. [Gray v. Ark. Dep't of Human Servs., 2013 Ark. App. 24.](#)

Appellant argued that the trial court erred in finding that there was sufficient evidence that DHS provided meaningful rehabilitation efforts to assist him with reunification of his children. Appellant's argument is procedurally barred because he did not appeal from prior orders in which the trial court found that DHS made reasonable efforts. The record also shows that although appropriate services were offered he failed to avail himself to those services. [Thornton v. Ark. Dep't of Human Servs., 2012 Ark. App. 670.](#)

There was sufficient evidence that children had been out of the home for more than a year, and appellant failed to remedy the conditions that caused their removal. Evidence demonstrated that appellant did not have adequate housing to meet the children's basic needs, her employment was inconsistent, her visitation with her children was sporadic, and her failure to visit was disruptive. [Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502.](#)

There was sufficient evidence to terminate where appellant's continued instability and drug and alcohol abuse failed to remedy the situation that led to the removal of her daughter and return was hazardous to her well-being. [Bryant v. Ark. Dep't of Human Servs., 2012 Ark. App. 491.](#)

Appellant's argument that she did not fail to remedy the issues that caused removal was not persuasive because it was based on the same premise for

her best interest argument. Further, there were two other termination grounds that were not argued and the court only needed one. [Apelu v. Ark. Dep't of Human Servs., 2012 Ark. App. 480.](#)

Appellant argued that DHS failed to make a meaningful effort to rehabilitate her and to correct the condition that caused removal. Her children were removed for extreme environmental neglect and despite the court's orders for appellant to clean her home to make it appropriate for her children to live she failed to comply despite efforts by DHS to purchase cleaning products and offer her the skills to do so. Further, appellant did not challenge the two other grounds on which the termination order was based and only one ground is necessary to terminate parental rights. [Lowry v. Ark. Dep't of Human Servs., 2012 Ark. App. 478.](#)

Appellant argued that the court erred in termination their parental rights because DHS failed to offer meaningful services, specifically more individual and family counseling. Evidence showed that there was lack of progress after more than a year of services and that that family counseling would only be appropriate at some future date based on the child's best interest. In addition, appellants failed to challenge the aggravated circumstance finding based on sexual abuse which does not require DHS to provide meaningful services. [Draper v. Ark. Dep't of Human Servs., 2012 Ark. App. 112.](#)

Appellants argued that all of the issues that led to the children's removal were a result of appellants' drug abuse that had been remedied by sobriety during their incarceration. Appellants failed to comply with the case plan or show they had the ability to care for their children the first nine months. Although appellants made progress while in prison they still had not shown the capacity to remain drug-free outside of prison or to be able to provide for their children. [Tankersley v Ark. Dep't of Human Servs., 2012 Ark. App. 109.](#)

The trial court was affirmed finding that the child had been out of the home for twelve (12) months and despite meaningful efforts by DHS, appellant failed to correct and remedy the conditions that caused removal. The court also found a history of actual violence, threatening behavior, anger and hostility to the court that continued to create a clear and continuing risk to her child. Compliance with the case plan and court orders is not determinative. What matters is the intended result. The appellate court also noted that the risk posed to the child in this case was not just injury, but death if appellant's mental illnesses manifested. The evidence also included appellant's lifelong history of mental illness and that the nature of this illness was permanent and unpredictable and

would present a continued risk to her child. [Rossie-Fonner v. Ark. Dep't of Human Servs., 2012 Ark. App. 29.](#)

There was sufficient evidence to terminate where appellant did make progress with drug treatment through drug court, but still seven months prior to the termination hearing had not been able to maintain a home, job, or adequately provide for her children. [Reichard v. Ark. Dep't of Human Servs., 2011 Ark. App. 762.](#)

Appellant argued that the trial court's TPR order was defective for failure to state the grounds or statutory basis upon which the decision was based. The judgment referenced the subsequent issues ground in the petition and there were multiple finding the court's intent was clear the court's intent was clear that supported the termination based on that ground. The court of appeals stated the court's intent was clear, but noted that it is better practice to include such information in the order. The appellate court held that the trial court indented in its written judgment to rely on the subsequent issue ground. [Nespor v. Ark. Dep't of Human Servs., 2011 Ark. App. 745.](#)

Appellant argued that there was no evidence to prove that he failed to remedy the conditions causing removal, arguing that he did not commit sexual abuse of his children. Although the court never found that appellant sexually abused the children, the court found that the children were sexually abused while in his custody. It was not necessary for the court to find that appellant himself committed the abuse, but that the conditions that caused the removal remained and based on the evidence that finding was not clearly erroneous. [Murray v. Ark. Dep't of Human Servs., 2011 Ark. App. 588.](#)

Appellant challenged the court's statutory authority to terminate his case on a fast track. Yet, appellant failed to raise this issue below and his attorney specifically waived any argument. Appellant also argued that court erred in finding that DHS made reasonable efforts to reunite the family and complained that the caseworker never attempted to contact him or provide services. Yet there were other grounds to terminate and appellant failed to attack the trial court's independent basis for termination. Proof of only one statutory ground is sufficient to terminate. [McGaughey v. Ark. Dep't of Human Servs., 2011 Ark. App. 536.](#)

Appellant asked the court to reverse because DHS failed to assist her with applying for DDS when the case began and failed to make meaningful effort to rehabilitate the conditions that caused removal. She argued that her low IQ and poverty do not render her unfit. Appellant substantially

completed the case plan, yet she made very little progress despite services offered. There was testimony that due to appellant's lack of cognitive ability, inability to reason, and low functioning she was not capable of providing for her children's basic needs. The evidence supported the grounds for termination and the best interest finding by the trial court. [Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 526.](#)

Appellant argued that DHS failed to provide meaningful or appropriate rehabilitative services because it failed to provide her in-patient drug treatment. Appellant's argument is procedurally barred because she failed to raise the issue with the trial court and she did not appeal any prior orders in which the court found that DHS had made reasonable efforts. The court further noted that appellant's argument also failed on its merits. Appellant was referred for a drug and alcohol assessment and provided the services recommended. She offered no argument that DHS was required to go beyond the recommended services nor did she object to the services provided. [Kelley v. Ark. Dep't of Human Servs., 2011 Ark. App. 481.](#)

Appellants argued that there was insufficient evidence to support the trial court's finding that they failed to remedy the condition that caused removal. There was evidence of chronic instability, and neither parent had progressed to beyond supervised visitation at the time of the termination hearing. Although appellants had made some progress with their case plans, it is not determinative. "What matters is whether completion of the plan achieved the intended result of making the parent capable of caring for the child." [Tucker v. Ark. Dep't of Human Servs., 2011 Ark. App. 430.](#)

Appellant argued that DHS failed to provide meaningful services in the form of one-on-one parenting classes. The circuit court found that DHS had not complied with the recommendation for one-on-one parenting and based its termination finding on three statutory grounds. However, appellant only argued that one ground as to meaningful reunification services was insufficient. [Martin v. Ark. Dep't of Human Servs., 2011 Ark. App. 423.](#)

Appellant argued that she had no obligation to comply with the case plan or court orders because DHS did not prove the reason for removal at the termination hearing. First, appellant failed to appeal the adjudication order and is precluded from review in an appeal of a subsequent order. Second, appellant's claim that the Arkansas State Police did not substantiate the sexual-abuse allegation is not supported by the document she claims. Finally, the law recognizes grounds not based on the child's removal from the home although those reasons must be substantiated in

the adjudication hearing, and the child was removed for sexual abuse by appellant's live-in companion. [Porter v. Ark. Dep't of Human Servs., 2011 Ark. App. 342.](#)

Appellant argued that there was insufficient evidence that he failed to remedy the conditions that caused removal. He argued that he was in partial compliance and that that ground did not pertain to him because he was not the cause of his children's removal. He cites K.C., 2010 Ark App. 353, as authority to support his argument that to terminate his rights based on the neglect perpetrated by the children's mother is not a ground for which he can remedy. However, this case is distinguished from K.C. because in this case the termination petition also alleged the ground of subsequent factors. Based on de novo review the appellate court can hold that other grounds for termination were proven even if not stated in the trial court's order. There was sufficient evidence to terminate based on the subsequent factors ground. Appellant's continued drug use demonstrated an indifference to remedying the problem and potential harm to the children. Failure to comply with the case plan and court orders, including participation in counseling and drug tests, attending NA/AA meetings, and maintaining stable housing also showed an indifference or inability to remedy the subsequent factors. [Allen v. Ark. Dep't of Human Servs., 2011 Ark. App. 288.](#)

Appellant argued that there was insufficient evidence to terminate her parental rights as to her two sons. She argued there was no evidence that her children were mistreated, sexually abused or subjected to fasting. She claimed it was a "witch-hunt" by DHS in retribution for Alamo. The evidence supported the trial court's findings that appellant refused to remedy the conditions that caused her children to be removed and continued to act as a bar to her children's return. Appellant's own admission that Alamo continues to run the ministry supports the circuit court's finding that it is an unsafe environment for her children. [Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182.](#)

Appellant argued that there was insufficient evidence to support the grounds to terminate his parental rights. There was evidence of appellant's unwillingness to find suitable housing outside TACM where young girls were repeatedly subjected to marriages, sexual abuse, fasting, and physical abuse. Appellant's psychiatric evaluation indicated that appellant maintained a low-average function and appeared to be easily led. His daughter had been out of the home for over 12 months and despite DHS efforts to provide services, appellant did not remedy the situation that caused the removal. Appellant admitted in his own testimony that he

failed to obtain housing and employment outside TACM. He also did not attend all his required counseling and only attended one staffing. [Reid v. Ark. Dep't of Human Servs., 2011 Ark. 187.](#)

Appellant argued that nothing in the record suggested that any of his children had ever been mistreated, subject to hunger, lack of medical care, or in real danger of sexual abuse. There was evidence by a sibling of physical abuse by the appellant and that he did not seek separate housing or employment because "of the fear of the Lord and the calling that I have." He also testified that he believed Alamo was a prophet and that his children were not in danger when they lived in his home. The court found clear and convincing evidence to support termination, specifically that appellant failed to remedy the conditions that caused removal by failing to obtain housing or employment outside of the TACM. [Seago v. Ark. Dep't of Human Servs., 2011 Ark. 184.](#)

Appellants had their rights terminated as to their children, G.P.1, G.P.2, G.P.3, and G.P.4. Although the appellants completed parenting and a psychological evaluation they failed to comply with any other orders or participate in the case plan. Despite efforts by DHS, appellants failed to show that they could or would provide a safe and stable environment for their children. Appellants also failed to show that they had the ability to support their children and were seven months in arrears on child support. [Parrish v. Ark. Dep't of Human Servs., 2011 Ark. 182.](#)

Appellant challenged the sufficiency of the evidence and argued that she stopped using cocaine and had a place to live. Yet, she continued marijuana use and admitted her continued smoking to deal with stress. [Billings v. Ark. Dep't of Human Servs., 2011 Ark. App. 111.](#)

Appellant, minor mother in foster care, challenged the sufficiency of the evidence as to best interest and TPR grounds. The first termination petition was filed in December 2009 based on abandonment when she left her child for over five months when she fled foster care. The trial court continued the goal of reunification with the intent of giving appellant a year to work toward reunification, but made specific findings that appellant abandoned her son and subjected him to aggravated circumstances by fleeing foster care. DHS filed its second TPR petition in February 2010 alleging the 12 month failed to remedy ground and aggravated circumstances ground. The appellate court affirmed based on aggravated circumstances, including abandonment and that further services would not likely result in reunification. As to best interest, appellant argued that if she were able to live in a stable environment under the supervision of another adult, TPR would not be necessary. The

evidence did not support appellant's ability to provide a stable environment for her child. [L.W. v. Arkansas Dept. of Human Servs., 2011 Ark. App. 44.](#)

Appellant argued that the court erred in denying him more time to achieve reunification with his child. The court did not err in finding that the time required for appellant to achieve parental fitness was beyond the statutory requirements due to appellant's history of drug abuse; his previous conviction and incarceration; his disregard of court orders upon release of prison; and his failure to demonstrate stability or sobriety for an appreciable length of time outside of prison. [Hoffman v. Arkansas Dep't of Human Servs., 2010 Ark. App. 856.](#)

Appellants argued that their failure or inability to achieve sobriety was not within the time frame allowed by the court and they needed more time. Their child was removed when he was five months and he had a host of medical problems stemming from Fetal Alcohol Syndrome. He had been in care for over a year and the parents had not remedied the conditions that caused removal. [Pine v. Ark. Dep't of Human Servs., 2010 Ark. App. 781.](#)

Appellant's argument that her permissive parenting was not harmful was not supported by the evidence, including specific evidence related to her alcohol abuse and issues that arose during visitation. Appellant's argument that DHS failed to make meaningful rehabilitation efforts also failed, despite the trial court's criticism of DHS's handling of appellant's apparent inability to grasp parenting. [Edwards v. Ark. Dep't of Human Servs., 2010 Ark. App. 739.](#)

Although the circuit court found several grounds to terminate, the court of appeals based its decision on the ground that the children had been adjudicated dependent-neglected and had been out of the home for more than twelve (12) months and the conditions for removal had not been remedied despite DHS meaningful efforts.

The father argued that DHS failed to provide him reunifications services while he was in prison, but failed to do so at the hearing and cannot do so the first time on appeal. The court noted that the father was still in prison at the time of the TPR hearing and had not yet corrected the conditions that led to the child's custody and was still unable to provide a stable home in a time frame consistent with the child's developmental needs or within a time frame viewed from the child's perspective. [Friend v. Ark. Dep't of Human Servs., 2009 Ark. App. 606.](#)

Appellant argued that DHS failed to comply with the statutory requirements to justify TPR, including failing to file the case plan, failing to provide notice of staffings, and not specifying the problems that caused removal and what steps appellant needed to take to regain her children. Appellant failed to argue that she was prejudiced by DHS's failure and failed to appeal prior adjudication and review orders.

The trial court was affirmed on the basis that the children had been adjudicated dependent-neglected and had remained out of the home for more than twelve months and, despite efforts by DHS, the conditions that caused removal had not been remedied. Appellant's failure to challenge the court's prior meaningful-efforts finding precluded the court from reviewing any adverse rulings resulting from those orders. [White v. Ark. Dep't of Human Servs., 2009 Ark. App. 609.](#)

TPR affirmed after original termination case was reversed and remanded to the circuit court with instruction to consider appellant's recent stability. The appellate court noted that the circuit court followed the appellate court's instructions and found no compelling evidence that appellant's recent mental health improvements were anything but "cyclic improvement... [that appellant] had not progressed to provide stability in all other aspects of her life necessary to keep [her child] out of danger." [Prows v. Ark. Dep't of Human Servs., 2009 Ark. App. 206.](#)

The court also affirmed the grounds noting that the child had been out of the home for seventeen (17) months, and although appellant had partially complied with the case plan and court orders, there was no evidence that he had corrected the problems that caused removal. [Byers v. Ark. Dep't of Human Servs., 2009 Ark. App. 581.](#)

No-merit TPR affirmed from an appeal from an order terminating appellants' rights to J.D. and K.D. and motion to be relieved as counsel pursuant to Linker-Flores granted. Circuit court affirmed and counsel's motion granted. Appellants remained on drugs throughout the case, including when they were in a drug rehabilitation facility and a few days before the termination hearing. They failed to obtain stable housing, complete drug rehabilitation, counseling, and parenting as ordered by the court. [Dean v. Ark. Dep't of Human Servs., 2009 Ark. App. 198.](#)

TPR affirmed. Appellant's children came into care when appellant left her three- and five-year-old children unattended while she went to church and thought "God was watching her children." Subsequently, her one-year-old and an infant were also taken into care and all children were adjudicated dependent-neglected. A psychological evaluation revealed that appellant

was chronically ill and displayed psychosis secondary to depression, major depression with psychotic features. In addition to other services, the circuit court ordered weekly counseling to address the mental health issues. The court held reviews and made findings of partial compliance and at the second review hearing found that appellant had made minimal progress in remedying the cause for removal.

Appellant argued that the trial court erred in finding that she failed to remedy the conditions that caused removal, although she concedes that she did not prove consistency with her therapy sessions. The appellate court found that the trial court did not error in its finding. Appellant only attended eight of the 48 ordered therapy sessions; three were canceled by the therapist. The trial court found, her failure to learn anything from the sessions that she did attend, her inability to comprehend that young children cannot be left alone unsupervised, or to take responsibility for leaving children alone indicated that the conditions had not been remedied that caused removal. [Jones-Lee v. Ark. Dep't of Human Servs., 2009 Ark. App. 160.](#)

Circuit court affirmed. This an appeal from an termination order of a S.D., who was removed in February 2007 when she was two months old in response to a hotline call by her father that she was not properly being fed by her mother. In March 2007, the child was adjudicated dependent-neglected due to neglect. Psychological evaluations revealed that appellants functioned with diminished mental capacity.

Appellants argued that the evidence was not sufficient to support the grounds because they had complied with the case plan. Appellant did not dispute that DHS provided meaningful and abundant services and they recognized that they would always need assistance in caring for their child and with more time and services they will continue to improve as parents.

The court found that the child had been out of the home for more than a year and that despite meaningful efforts the parents had not remedied the circumstances that caused removal. The court found they had an inability to digest and implement necessary skills to care for their child based on incapacity, not indifference. The appellate court affirmed the circuit court citing case law that indicates that compliance with a case plan is not determinative, but rather whether the plan achieves the intended results and the intent to provide permanency in the life of a child. [Dowdy v. Ark. Dep't of Human Servs., 2009 Ark. App. 180.](#)

TPR affirmed. At the time of the termination hearing, the children had been out of appellant's home for twenty months and appellant had not

remedied the situation that caused removal. Appellant still had issues with regard to housing, employment, finances, anger, and an inability to properly interact with his children during visits. Appellant's compliance with certain aspects of the case plan do not warrant reversal; what matters is whether his compliance made him capable of caring for his children.

[Belue v. Ark. Dep't of Human Servs., 104 Ark. App. 139 \(2008\).](#)

TPR upheld. The circuit court acknowledged that appellant had completed anger-management and substance-abuse classes in prison, had filed for divorce, and was employed; however, at the time of the TPR hearing, appellant still did not have any means to care for his child despite six-year case history with family. Latham v. Ark. Dep't of Health & Human Servs., 99 Ark. App. 25 (2007).

TPR upheld based on finding that other factors arose that demonstrated that return home would be contrary to the child's health, safety, and welfare. Appellant was incapable of remedying the conditions that caused removal and had subjected the child to aggravated circumstances. The one-month old infant came into care as a result of a spiral fracture. DHS provided intensive services for fourteen months, and the appellant could only care for the child for 2-3 hours with her mother. Appellant had limited intellectual and mental capacity and physical disabilities, which impaired her ability to care for her child. The trial court also found that it was in the child's best interest for termination of parental rights and that the child was likely to be adopted.

The Court found that the appellant was willing to be the parent her child needed, but was unable to be the parent on her own. "Appellants' rights had to yield to the best interest of the child." Meriweather v. Arkansas Dep't of Human Servs., 98 Ark. App. 328 (2007).

TPR affirmed. DHS filed a petition to terminate parental rights based, in part, upon the child having been placed out of the home for an excess of twelve months. The appellant argued that termination was improper because the hearing was held twelve days less than twelve months after the child's removal. The court found that the record revealed that the court recognized that the hearing was held sooner than twelve months and found clear and convincing evidence to terminate. The termination order was entered twenty-seven days after the hearing, which was more than twelve months after the child was placed out of the home. Citing Ullom v. Ark. Dept of Human Servs., 340 Ark. 615, 12 S.W.3d 204 (2000), the court found that the child was out of the home for more than twelve months at the time the termination order was entered, which cured any error. Included in the termination order was a finding that the child had been

subjected to aggravated circumstances; however, the appellant did not contest that finding. [Riley v. Ark. Dep't of Human Servs., 98 Ark. App. 235 \(2007\).](#)

Court of appeals reversed and the circuit court affirmed on termination of parental rights. The court found that the record revealed that the appellant failed to comply with the court's orders and did not provide the court with any evidence that she had remedied her drug problem that caused her children to be removed from her home. The evidence showed that she failed to address her drug problems, failed to provide meaningful proof of employment, or failed to establish a stable living environment for her children. [Long v. Ark. Dep't of Human Servs., 369 Ark. 74 \(2007\).](#)

TPR affirmed. The children had been in and out of foster care two years, and the record had abundant proof of environmental neglect, and that despite intensive efforts made by DHS, no appreciable change had occurred. [Sowell v. Ark. Dep't of Human Servs., 96 Ark. App. 325 \(2006\).](#)

In Kight I, the trial court was reversed for terminating appellant's parental rights. DHS sought review with the Supreme Court, which was denied and then later filed a second petition for TPR, which was affirmed. Appellant did not challenge the sufficiency of the evidence or that the TPR was in the child's best interest. Appellant only argued that the trial court erred by not following the court of appeal's order to provide reunification services that violated her due-process rights.

The appellate court noted DHS's meager attempts at providing reunification services, but noted that the children had been out of the home for over three years, and neither child has seen their mother in two years. At the advice of counsel, appellant refused subsequent drug screens after she tested positive when she denied using drugs. As a result, she was denied visitation. Appellant also did not maintain stable housing or employment. [Kight v. Ark. Dep't of Human Servs., 87 Ark. App. 230 \(2004\).](#)

The parent counsel's motion to withdraw was granted, and the TPR was affirmed. Appellant failed to remedy the situation that caused her children to come into care despite DHS's meaningful efforts to rehabilitate the home and correct the conditions that caused removal. Appellant failed to maintain stable housing, blamed her children for DHS involvement, had numerous interruptions in therapy due to multiple incarcerations, and was incarcerated again at the time of the termination hearing. She failed to protect her children from abuse and when she eventually acknowledged their abuse, one doctor testified that she had no idea whatsoever of the

magnitude of the abuse. [Linker- Flores v. Ark. Dep't of Human Servs., 364 Ark. 224 \(2005\)](#) ([Linker- Flores II](#)); [Linker-Flores v. Ark. Dep't of Human Servs., 359 Ark. 131 \(2005\)](#) ([Linker-Flores I](#)).

TPR affirmed and attorney's motion to withdraw was granted. There was clear and convincing evidence that the children had been correctly adjudicated dependent-neglected. The children continued out of the parents' home for seventeen months despite DHS efforts to provide services to remedy the situation. The father failed to rehabilitate the condition that caused removal in a reasonable amount of time and manifested an incapacity and indifference to remedy the conditions that caused removal, including failing to maintain stable housing and employment, to provide child support, or to comply with the orders of the court. [Lewis v. Ark. Dep't of Human Servs., 364 Ark. 243 \(2005\)](#).

DHS petitioned the supreme court for review from the court of appeals' reversal of the trial court's TPR order. The court of appeals found that none of the grounds were supported by clear and convincing evidence and that appellant had shown significant improvement and met nearly all of her case- plan requirements.

The trial court terminated appellant's parental rights based on the facts that the children had remained out of the home for more than one year and, despite meaningful efforts by DHS to rehabilitate the home and correct the conditions that caused the removal, the conditions had not been remedied. The trial court also found that appellant failed to provide meaningful contact or support with the children and manifested an incapacity or indifference to remedy the conditions that caused removal.

The supreme court noted the following evidence supporting the trial court's decision to terminate appellant's parental rights. Her recent steps prior to the termination hearing to gain employment and housing did not negate her history of instability. When appellant did work, it was with a temporary agency, and at the time of the termination hearing, she was laid off. Appellant never provided documented evidence of support payments for the children despite the trial court's request. Appellant married a convicted sex offender, who, as a condition of his parole, could not have any unsupervised contact with minors, after her four minor children were placed in foster care. Appellant failed to maintain her counseling and medication management for depression.

The supreme court stated the bottom line is that the evidence was clear that these children needed a permanent and stable environment. Although the appellant began to make some progress, the children had been out of the home for two years, and her compliance was at the eleventh hour. It was not in error for the trial court to disregard the progress she had made immediately before the termination hearing. This progress did not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed. [Camarillo-Cox v. Ark. Dep't of Human Servs.](#), 360 Ark. 340 (2005).

After 2.5 years of services including placing appellant in a foster home with her three children to learn proper care of her children, counseling, parenting classes, adult education and GED classes, and housing assistance referrals, the trial court found that the appellant was still non-compliant with court order and still had no visible means to support the children. Further, the children would not be able to return to the appellant within a time frame consistent with the children's developmental needs.

Appellant challenged the constitutionality of the statute requiring the permanency-planning hearing to be held no later than twelve months after the date a juvenile enters foster care. She claimed it arbitrarily and capriciously placed a time limit on parental rights and denied parents their due-process rights. However, appellant did not preserve the issue for appeal, nor did she notify the Attorney General as required under Arkansas Code Annotated section 16-111-106. It is generally reversible error when the Attorney General fails to receive notice of a constitutional attack of a statute. [Maxwell v. Ark. Dep't of Human Servs.](#), 90 Ark. App. 223 (2005).

Court of appeals reversed and trial court affirmed on termination of parental rights. Despite the numerous opportunities and assistance by DHS, the trial court found the defendant continued to be an unfit parent, and there was little likelihood that she would ever be ready to be reunited with her children. The court noted that the case had gone on for more than two years, and its resolution was long overdue, especially in light of the convincing evidence that appellant failed to remedy the serious problems that caused her children's removal. [Trout v. Ark. Dep't of Human Servs.](#), 359 Ark. 283 (2004).

The termination was upheld. First, appellant argued that the circuit court erred in failing to appoint counsel at the adjudication hearing and that if counsel was waived it was not knowingly or intelligently made. Although this challenge was not timely, the supreme court reviewed the remainder of

the case to ensure that appellant was not deprived of fundamental fairness leading up to the termination. The supreme court noted that appellant was appointed an attorney following the adjudication hearing. The court also gave no consideration to the testimony given by the appellant at the adjudication hearing because appellant was not represented by counsel.

The TPR was based on clear and convincing evidence. The child had remained out of the home for over two years, and appellant had manifested an incapacity or indifference to correct the conditions that caused removal. [Jefferson v. Ark. Dep't of Human Servs., 356 Ark. 647 \(2004\).](#)

The termination was upheld where the trial court found that parents persistently refused to remedy the conditions in the home that caused removal, which was an intolerable dirty condition that made it unsafe for the children to reside there. For fourteen months, DHS worked with the family to provide services, but the appellants failed to demonstrate that they were capable of creating a safe and clean environment for their children. [Browning v. Ark. Dep't of Human Servs., 85 Ark. App. 495 \(2004\).](#)

TPR reversed where appellant had successfully completed a six-month drug treatment program at the time of the termination hearing. Appellant's children were removed from the home due to drug use. Her drug tests were negative from July 2002 - December 2002. She relapsed in January 2003 and then enrolled and completed a six-month residential drug program. The trial court acknowledged appellant's progress. The court's concern about appellant's relationship with a known drug user was speculative. Further, the court was mistaken as to how long the children had been removed from the home. [Kight v. Ark. Dep't of Human Servs., 87 Ark. App. 230 \(2004\).](#)

Termination upheld where conditions that caused removal were not remedied. Trial court found that there was potential for further harm to the child if left in appellant's custody due to the extensive physical and sexual abuse the child endured by appellant's boyfriend. The appellate court noted that the record was replete with evidence that the appellant cared more for the boyfriend than her child. It is not enough for a parent to refrain from personally harming a child; a parent has a duty to protect the child from harm. Further, the completion of a case plan is not determinative. What matters is whether completion of the case plan achieved the intended result of making the appellant capable of caring for her child. [Wright v. Ark. Dep't of Humans Servs., 83 Ark. App. 1 \(2003\).](#)

Termination of parental rights was warranted. Evidence revealed that the children had been out of the home over a year, and although the mother had made some progress, she was still not able to adequately care for her children. The doctor testified that, in his opinion, the mother could not adequately parent her children. The court of appeals affirmed the trial court's finding that there were no compelling reasons to continue attempting to reunify because it was not in the children's best interest. [Walters v. Ark. Dep't of Human Servs., 77 Ark. App. 191 \(2002\).](#)

TPR affirmed when the court found that the children remained out of the home for more than a year, that appellant suffered from paranoid schizophrenia, and that appellant was unable and unwilling to provide protection, security, and care for her children. Appellant argued that DHS failed to provide appropriate reunification services and that TPR was contrary to her children's best interests. [Cassidy v. Ark. Dep't of Human Servs., 76 Ark. App. 190 \(2001\).](#)

Termination was appropriate where the child had been out of the home for twelve months and the conditions that warranted removal had not been remedied by the parent despite DHS's meaningful efforts. [Ruble v. Ark. Dep't of Human Servs., 75 Ark. App. 321 \(2001\).](#)

The evidence was sufficient to support the TPR where the appellant's children remained out of the home for more than a year and the conditions that caused removal had not been remedied. Appellant failed to take advantage of the psychiatric treatment, drug and alcohol abuse treatment and parenting classes, and had repeated positive tests indicating continued cocaine usage. Further, the Arkansas Supreme Court held that assuming that a mother had a due- process right to counsel in a proceeding to terminate her parental rights, her request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, because her request did not satisfy constitutional standards for the waiver of counsel. [Bearden v. Ark. Dep't of Human Servs., 344 Ark. 317 \(2001\).](#)

TPR affirmed on the ground that appellant's children had been adjudicated dependent-neglected and had continued out of the home for twelve months and that, despite a meaningful effort by the department to rehabilitate the home and correct the condition that caused removal, those conditions had not been remedied by the mother when she had not managed to consistently maintain her home in a sanitary condition or to acquire a steady job that would have enabled her to provide for her children. There was also evidence that the physical abuse of the children

had not ended. [Dinkins v. Ark. Dep't of Human Servs., 344 Ark. 207 \(2001\).](#)

The termination order was upheld where the children had been out of her home for the majority of their lives, and evidence revealed that appellant failed to provide a home and to demonstrate her ability to adequately parent the children after receiving rehabilitation services for over three years. [Moore v. Ark. Dep't of Human Servs., 69 Ark. App. 1 \(2000\).](#)

The termination was upheld where appellant repeatedly failed to comply with the court's orders designed to remedy the situation that caused removal. Any attempts at compliance were sporadic and inconsistent, and her pattern of inconsistent visitation continued to harm the children. Further, a finding by the trial court that appellant was unable to provide her children with the consistency and supervision that they needed was sufficient to show that she was an unfit parent.

Appellant also argued that the trial court erred in not placing her children with her mother; however, the evidence revealed that the grandmother had refused custody initially, failed to visit the children while in foster care, and indicated an unwillingness to take responsibility for her grandchildren. [Baker v. Ark. Dep't of Human Servs., 340 Ark. 42 \(2000\).](#)

Appellants argued that the termination of parental rights was not based on clear and convincing evidence. Although the petition to terminate parental rights was filed before the twelve month period required by the statute, the order was entered after the child had been out of the home for twelve months. The evidence was sufficient to support a finding that DHS made meaningful efforts to rehabilitate the home. The medical evidence indicated that the child's injuries could not have occurred in the manner in which the father testified, and they were inflicted at a time when only the appellants were present with the child. Appellants demonstrated a pattern of abuse that was sufficient to show that return home would be contrary to the child's health and safety, and appellants manifested an indifference to remedy the situation. [Ullom v. Ark. Dep't of Human Servs., 340 Ark. 615 \(2000\).](#)

TPR upheld where DHS offered services for three years; however, appellant failed to participate and failed to rehabilitate her home and the conditions that caused the removal. In addition, the trial court found that appellant's children had been out of the home over twelve months and that the appellant had failed to provide significant material support or to have meaningful contact with them. [Wade v. Ark. Dep't of Human Servs., 337 Ark. 353 \(1999\).](#)

On March 10, 1997, the trial court terminated appellant's parental rights finding that the appellant had not remedied the conditions that caused removal; that DHS had made a meaningful effort to rehabilitate the home and correct the conditions that caused removal; that termination of parental rights was in the interest of the children; and that DHS had an appropriate placement plan for the children. There was evidence of appellant's failure to care for the special medical and psychological needs of her children, a condition that was not remedied despite DHS's meaningful efforts of parenting classes, housekeeping services, and counseling. The trial court did not commit reversible error in granting the TPR petition because it was filed before both the children were out of the home for more than twelve months. [Donna S. v. Ark. Dep't of Human Servs., 61 Ark. App. 235 \(1998\).](#)

Appellant's parental rights were terminated as to her four children; however, her appeal was limited to her two youngest children. The children were first removed in April 1990, returned home in August 1992, and removed again in July 1994. The trial court found the children to be dependent-neglected based on evidence that J.T. had been physically abused and S.T. had been sexually abused and sexually exploited. In December 1994, appellant was found guilty of raping J.T. and in March 1994, she pleaded nolo contendere to the rape of R.T. In September 1995, DHS filed a petition to terminate parental rights. The grounds supporting termination included that the children had been adjudicated dependent-neglected; the children had been out-of-home for twelve (12) months despite DHS's efforts to rehabilitate the home and to correct the conditions which caused the removal; and that the conditions that caused removal had not been remedied by the parent. [Thompson v. Ark. Dep't of Human Servs., 59 Ark. App. 141 \(1997\).](#)

On August 31, 1995, the department filed a petition to terminate parental rights on the ground that the child had resided outside of the home for a period in excess of one year and, that despite meaningful efforts by DHS to rehabilitate the home and correct the conditions that caused the removal, the conditions had not been remedied to the extent that appellant was able to provide for the essential, basic, and emotional needs of the child.

The trial court's finding that the appellant did not have the capacity to be the type of parent the child needed was not clearly erroneous. T.T., who was thirteen (13) at the time of the termination hearing, testified that she wanted her mother's parental rights taken away. The mother was diagnosed as being bipolar, experiencing mental states from manic to psychotic to depression. Various professionals testified that T.T. needed an

extremely stable environment and that, despite the appellant's efforts, she could not give the stability that the minor child needed.

Appellant challenged the trial court's order because the court did not make a finding of the appellant's unfitness as a parent. The proceeding to terminate parental rights is a two-step process, requiring the court to find (1) the parent unfit and (2) that the termination is in the best interest of the child. Although the court did not actually use the word "unfit," it clearly made a finding that the appellant was unable to be the type of parent that T.T. needed which is a sufficient finding of appellant's unfitness. [J.T. v. Ark. Dep't of Human Servs., 329 Ark. 243 \(1997\).](#)

Appellant's children had been out of her home for over a year, and appellant failed to comply with the trial court's orders and to correct the circumstances that caused her children to be removed. Appellant argued that she was unable to avail herself of services while incarcerated. However, appellant failed to comply with the court's orders while incarcerated and for the brief period that she was not incarcerated. In addition, there was evidence that she directly disobeyed the court's orders regarding supervised visitation.

Imprisonment does not toll a parent's responsibilities toward his or her children. The appropriate inquiry where a parent has been ordered to comply with a court order and is incarcerated is whether the parent utilized resources available to maintain a close relationship. [Malone v. Ark. Dep't of Human Servs., 71 Ark. App. 441 \(2000\).](#)

The trial court's ruling was reversed after appellant successfully argued that DHS failed to prove by clear and convincing evidence that she failed to remedy the conditions that caused the removal. She asserted that she secured a stable residence, maintained regular employment, completed a drug and alcohol assessment, submitted to random drug screens, attended her child's physical therapy and medical appointments, cooperated with parenting classes, and consistently exercised her visitation. [Minton v. Ark. Dep't of Human Servs., 72 Ark. App. 290 \(2000\).](#)

(B) Failure to Provide Support

The juvenile has lived outside the parent's home for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with juvenile. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(ii\)\(a\).](#)

Material support consists of either financial contributions or food, shelter, clothing or other necessities when such contribution has been requested by the juvenile's custodian or ordered by the court. Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(c).

To find willful failure to maintain meaningful contact, it must be shown that parent was not prevented from visiting or having contact with juvenile by juvenile's custodian or other person, taking into account the distance of juvenile's placement from the parent's home. Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(b).

It is not necessary that the twelve-month period referenced in this subdivision immediately precede the filing of the petition for TPR or that it be for twelve (12) consecutive months. Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(d).

Appellant argued that the trial court erred in relying on a ground (support and contact) to terminate not pled in the petition violating his due process rights. Appellant is correct on this point. There was no notice and DHS never amended its petition or moved to conform the pleading to proof. The first time appellant was placed on notice of the ground was in the order terminating his rights. Appellant was denied the opportunity to develop a defense against the ground or to address this ground in closing arguments. Due process requires that appellant be afforded an opportunity to properly defend the allegations against him prior to terminating his parental rights and as such the court's reliance on this ground was clearly erroneous.
[Jackson v. Ark. Dep't of Human Servs., 2013 Ark. App. 411.](#)

Appellant was incarcerated for manufacture of methamphetamine. The appellate court stated that the appropriate inquiry is whether an incarcerated parent who has been ordered to comply with the court's reunification orders has utilized those resources available to maintain a close relationship with the children. However, appellant only saw his children four times in the four months prior to his arrest and in the following months he only wrote two letters. The court's finding that he failed to maintain contact with his children was not clearly erroneous.
[Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502.](#)

Trial court was not clearly erroneous where appellant failed to support or maintain meaningful contact with his children. The evidence showed that appellant made no effort to contact his children for eighteen (18) months, including letters or phone calls, while he was incarcerated or when he was released. [Smith v. Ark. Dep't of Human Servs., 2010 Ark. App. 666.](#)

Circuit court affirmed for finding children out of the father's custody for over twelve months and that he willfully failed to maintain meaningful contact with his children during that time. Appellant was in prison six months of that time and only visited his children two times when he was not in prison. Appellant's argument that he had to move out of state to find work was not persuasive. The court stated it is for the circuit court to determine appellant's credibility as to the reasons he did not comply with court-ordered visitation. [Posey v. Ark. Dep't of Human Servs., 370 Ark. 500 \(2007\).](#)

TPR affirmed where the circuit court found that the children were not in the father's custody for over twelve (12) months, and he willfully failed to maintain meaningful contact during that time. Appellant was in prison for six months and only visited his children two times when he was not in prison. Appellant argued that he was unable to visit his children because he had to move out of state for work. The Supreme Court stated that it is for the circuit court to determine the appellant's credibility for reasons in not complying with the court-ordered visitation. [Sturdivant v. Ark. Dep't of Human Servs., 99 Ark. App. 393 \(2007\).](#)

It was an error for the chancellor to conclude that failure to support constituted an additional ground to terminate when he failed to find that the parent willfully failed to provide support, and DHS conceded that it never requested support from appellant. [Dinkins v. Ark. Dep't of Human Servs., 344 Ark. 207 \(2001\).](#)

Order terminating father's parental rights to four-year-old daughter was not clearly erroneous; evidence that father never took any action to protect daughter from mother's significant usage of illegal drugs and unsafe conditions at mother's residence, that he never asked to intervene in the dependency-neglect case involving his daughter, he failed to avail himself of options to locate daughter, and had seen daughter only twice in past year was clear and convincing evidence that it was in daughter's best interest that her father's parental rights be terminated. [Larscheid v. Ark. Dep't of Human Servs., 343 Ark. 580 \(2001\).](#)

TPR reversed. Appellant argued that while she did not pay the ordered child support, she did bring the child gifts and clothes, maintained a residence where the child could live, and paid court fines so that she could provide transportation for her daughter. Appellant did not willfully refuse to pay support, and there was no appreciable evidence that appellant had the ability to pay even a nominal amount of support. [Minton v. Ark. Dep't of Human Servs., 72 Ark. App. 290 \(2000\).](#)

Evidence was sufficient to refute the appellant's claim that he maintained meaningful contact with the child. [Jones v. Ark. Dep't of Human Servs., 70 Ark. App. 397 \(2000\).](#)

Father's parental rights were terminated where there was clear and convincing evidence that the two sons lived apart from the father for twelve months and that he failed to provide monetary support for them or to make sufficient contact with them. [Crawford v. Ark. Dep't of Human Servs., 330 Ark. 152 \(1997\).](#)

(C) Presumptive Father Not Biological Father

The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(iii\).](#)

Appellant argued that the termination order should be reversed because he was not the legal father to his putative daughter and he had no parental rights to terminate. Appellant failed to raise this argument with the circuit court and it cannot be raised now on appeal. [Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 537.](#)

(D) Abandonment

Abandonment by the parent. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(iv\).](#)

Appellant argued that the trial court erred in finding there was sufficient evidence that he abandoned D.D. because there was no evidence of intent. The appellate court questioned whether appellant's incarceration throughout the case would constitute abandonment but found an alternative ground based on subsequent factors. [Bradbury v. Ark. Dep't of Human Servs., 2012 Ark. App. 680.](#)

(E) Consent

A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(v\)\(a\).](#)

Appeal dismissed where appellant failed to appeal from an earlier termination based on her consent that was valid. The statutory requirements for consent under the juvenile code are separate and distinct from consent from the adoption code. There was no need for DHS to seek to set aside the first termination order. The circuit court lacked jurisdiction

to set aside the order six months later and the second termination was invalid. [Faas v Ark. Dep't of Human Servs., 2011 Ark. App. 666.](#)

The trial court did not abuse its discretion and gave appellant an opportunity to declare her intention to consent to termination. Appellant testified that she had spoken to her attorney and understood the difference between voluntary and involuntary termination, but wanted the judge to consider accepting a consent if the court was inclined to terminate her parental rights. The trial court refused on the grounds that the case had been set for a month and had already been continued once. She had time to consent and was still ambivalent about doing so at the time of the hearing. [Jordan. v. State, 2011 Ark. App. 592.](#)

If the consent is executed under oath by a person authorized to administer the oath, the parent is not required to execute the consent in the presence of the court unless required by federal law. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(v\)\(b\).](#)

A parent may withdraw the consent for termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the clerk of the court in the county designated by the consent as the county in which the TPR will be filed. [Ark. Code Ann. § 9-27-341\(g\)\(1\)\(A\).](#)

No fee shall be charged for filing the affidavit, and if the ten day period ends on a weekend or holiday, it may be filed the next working day. [Ark. Code Ann. § 9-27-341\(g\)\(1\)\(B\)-\(C\).](#)

(F) Juvenile or Sibling as Victim

The court has found the juvenile to be a victim or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent, parents, stepparent, or stepparents. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(vi\)\(a\).](#)

Such findings by the court shall constitute grounds for immediate termination of the parental rights of one or both of the parents. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(vi\)\(b\).](#)

This case originated as a sex-abuse case and failure to protect that resulted in termination of parental rights of the father and then the mother. Only the mother appealed. Appellant argued that there was no change in circumstances to modify the goal of reunification to termination and that DHS failed to provide her the case plan timely, which prejudiced her. Appellant's arguments are procedurally barred because she failed to raise

them with the trial court. [Carr v. Ark. Dep't of Human Servs., 2012 Ark. App. 688.](#)

No-merit TPR affirmed from appeal from an order terminating appellant's rights to her two children and a motion to be relieved as counsel pursuant to Linker-Flores. Circuit court affirmed and counsel's motion granted. The children were removed in November 2006 and a finding of dependency-neglect based on sexual abuse by the stepfather was in January 2007. The adjudication order was never appealed, although the stepfather denied his abuse and the mother said the accusations were unfounded and she "dogmatically" supported her husband, causing continued harm to her daughter. [Krass v. Ark. Dep't of Human Servs., 2009 Ark. App. 245.](#)

The trial court found by clear and convincing evidence that the child was the victim of abuse that could endanger his life; that he sustained multiple fractures over a period of two to three weeks evidencing Battered Child Syndrome; and that these injuries were perpetrated by the mother and/or father. Appellants argued that the chancellor's finding was clearly erroneous. While they did not deny that the child was abused, they argued that there were others who had access to the child who could have inflicted the abuse. [Gregg v. Ark. Dep't of Human Servs., 58 Ark. App. 337 \(1997\).](#)

(G) Subsequent Factors

Subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose that demonstrate that placement of the juvenile to the custody of the parent is contrary to the juvenile's health, safety or welfare, and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent placement of the juvenile to the custody of the parent. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(vii\)\(a\).](#)

The other factors ground upheld where appellant concealed child from DHS and law enforcement following the probable cause hearing for five months and evidence showed that appellant did not have a job or stable residence, continued to use drugs, demonstrated an inability to stay out of jail, and had sporadic visitation with her children. [Anthony v. Ark. Dep't of Human Servs., 2013 Ark. App. 556.](#)

Appellant argued that the subsequent factors ground did not apply because DHS failed to offer services to him and there was no evidence that he failed to remedy the subsequent factor. Appellant made his first appearance before the court at the termination hearing. DHS failed to show that it took

any steps to contact appellant after his appearance in the case to determine his suitability as a caregiver or to provide him services. Termination reversed and remanded. [Jackson v. Ark. Dep't of Human Servs., 2013 Ark. App. 411.](#)

As to the subsequent factors, appellant demonstrated continued instability and had anger issues; he did not have a valid driver's license; he was not managing his medication; and he failed to resolve outstanding felony warrants in Arizona. [Austin v. Ark. Dep't of Human Servs., 2013 Ark. App. 406.](#)

Appellants argued that educational neglect was not the cause of removal, but a subsequent condition. They also argued that their inability to adequately communicate with their child, who was deaf, did not constitute educational neglect. Appellants' failure to object at the trial procedurally bars review on appeal. Appellants argued that the environmental neglect did not threaten the physical health and safety of their children. Yet, there was evidence at the termination hearing of continuing problems with raw sewage, mold, and trash. The court's order was not clearly erroneous. [Gray v. Ark. Dep't of Human Servs., 2013 Ark. App. 24.](#)

The appellate court found that there was sufficient evidence to support a finding of subsequent factors where appellant failed to maintain employment, stable housing and transportation, had no plan to support his children, failed to comply with case plan, avail himself to services provide by DHS, and maintain contact with his children. [Bradbury v. Ark. Dep't of Human Servs., 2012 Ark. App. 680.](#)

Appellant argued that the trial court's TPR order was defective for failure to state the grounds or statutory basis upon which the decision was based. The judgment referenced the subsequent issues ground in the petition and there were multiple finding the court's intent that supported the termination. The Court of Appeals stated the court's intent was clear, but noted that it is better practice to include such information in the order. [Nespor v. Ark. Dep't of Human Servs., 2011 Ark. App. 745.](#)

There was evidence that one of the children disclosed inappropriate touching and another child developed night terrors and enuresis when overnight visits with appellant began. There was also evidence of instability with appellant's relationships. [Murray v. Ark. Dep't of Human Servs., 2011 Ark. App. 588.](#)

Affirmed based on issues including chronic violence in appellant's home; appellant's continuing to live with the man that perpetrated the violence

and who was found to have sexually abused her child, yet who failed to participate in any of the dependency-neglect proceedings; appellant's failure to participate in therapy; and appellant's threats, hostility and erratic behavior toward DHS and CASA. [Porter v. Ark. Dep't of Human Servs., 2011 Ark. App. 342.](#)

Appellant argued that there was insufficient evidence that he failed to remedy the conditions that caused removal. He argued that he was in partial compliance and that that ground did not pertain to him because he was not the cause of his children's removal. He cites K.C., 2010 Ark App. 353, as authority to support his argument that to terminate his rights based on the neglect perpetrated by the children's mother is not a ground for which he can remedy. However, this case is distinguished from K.C. because in this case the termination petition also alleged the ground of subsequent factors. Based on de novo review the appellate court can hold that other grounds for termination were proven even if not stated in the trial court's order. There was sufficient evidence to terminate based on the subsequent factors ground. Appellant's continued drug use demonstrated an indifference to remedying the problem and potential harm to the children. Failure to comply with the case plan and court orders, including participation in counseling and drug tests, attending NA/AA meetings, and maintaining stable housing also showed an indifference or inability to remedy the subsequent factors. [Allen v. Ark. Dep't of Human Servs., 2011 Ark. App. 288.](#)

The appellate court noted that although the trial court did not quote the statutory language exactly, the circuit court's intent was clear that it terminated appellant's parental right based on the ground concerning subsequent issues. At issue here was domestic abuse. The trial court also made findings that although the parents had extra time to work toward reunification, they failed after seventeen (17) months to get their act together to be in a position to parent their child. [Porter v. Ark. Dep't of Human Servs., 2010 Ark. App. 680.](#)

Appellant argued that there was insufficient evidence to terminate her parental rights. She also argued that the trial court should not consider other reasons for terminating her rights that were not consistent with the original issue that caused removal. Although the child was initially removed due to appellant's health problems, other significant issues arose in the case, including lack of progress with her health care and failure to follow her doctor's recommendations, lack of food in the home, her inability to provide a stable home environment, combative behavior and psychological problems, and her inability to follow the court's orders for

more than two years. The trial court was correct to consider events and conditions that occurred after the juvenile was removed. [Jones v. Ark. Dep't of Human Servs., 361 Ark. 164 \(2005\).](#)

Americans with Disabilities Act Accommodations

DHS shall make reasonable accommodations in accordance with the Americans with Disabilities Act to parents with disabilities to allow them meaningful access to reunification and family preservation services. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(vii\)\(b\).](#)

For purposes of this subsection, the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(vii\)\(c\).](#)

Appellants appealed an order terminating their parental rights. The mother argued that the circuit court was fully aware of her mental challenges yet did not ensure that she was offered reasonable accommodations pursuant to the American with Disabilities Act (ADA). She recognized that she did not raise this issue to the circuit court but that it fell within a Wicks exception to the contemporaneous-objection requirement. The court of appeals held that the circuit court specifically acknowledged the mother's mental status in its adjudication order, appointed an attorney ad litem to represent her, and did not act in a manner that flagrantly prejudiced the mother so as to justify the application of the Wicks exception. [Weathers v. Ark. Dep't of Human Servs., 2014 Ark. App. 142.](#)

Appellant (mom who had a 55 IQ) argued that the trial court was fully aware of her mental challenges court yet did not made sure that she was offered reasonable accommodations under the American with Disabilities Act. Even if this was not raised below she argues that it was within the third exception to the contemporaneous objection requirement, known as a Wicks exception, relating to the trial court's duty to intervene, even without an objection. Yet, the trial court did not ignore appellant's deficiencies. The court appointed a guardian ad litem to represent the appellant and there were special efforts made to adapt her parenting classes that were acknowledged by her counsel that benefited appellant. Further, appellant never requested services. The appellate court found that the court did not commit an error that would require the rare application of the Wicks exception. [Pratt v. Ark. Dep't of Human Servs., 2012 Ark. App. 399.](#)

Appellant failed to preserve for appeal her argument that she had a disability as an alcoholic and DHS failed to make reasonable

accommodations under ADA. The court did not err in its finding of best interest that the children were likely to be adopted. Although appellant complied with significant portions of the case plan, the completion did not achieve its intended result of making appellant capable of caring for her children. Despite additional time and intensive services she continued to abuse alcohol and failed to remedy the reasons that resulted in the children's removal. [Burnett v. Ark. Dep't of Human Servs., 2011 Ark. App. 596.](#)

Appellant argued that she was entitled to reasonable accommodations under the Americans with Disabilities Act (ADA). The court of appeals noted that the circuit court was aware that appellant was "so mentally challenged that she could not qualify even to enter the course that would prepare her for a subsequent GED preparation course." Appellate court was not presented with issue of the adequacy of the services provided under the ADA. Termination of rights affirmed. [Baker v. Ark. Dep't of Human Servs., 2011 Ark. App. 400.](#)

Appellant failed to establish that she was entitled to AD protection; therefore, any ADA arguments were not preserved for appeal. Appellant did not inform DHS that she was disabled, and she did not identify any needed services. Termination was appropriate when the child had been out of the home for twelve months, and the conditions that warranted removal had not been remedied by the parent despite DHS's meaningful efforts. [Ruble v. Ark. Dep't of Human Servs., 75 Ark. App. 321 \(2001\).](#)

Appellant lacked standing to raise the issue of whether Arkansas Code Annotated section 9-27-341(b)(2)(E) created an unconstitutional presumption that the mentally ill have the inability to rehabilitate their circumstances. The trial court's order specifically stated that appellant had the mental capacity to remedy her conditions and that termination was not granted under this subsection. Appellant lacked standing to challenge the constitutionality of a statute when it was not applied in a discriminatory manner. [Donna S. v. Ark. Dep't of Human Servs., 61 Ark. App. 235 \(1998\).](#)

Parent failed to demonstrate that her rights, pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. §12132, were violated when she was denied visitation with her child, and her parental rights were terminated when parent was not denied any services on the basis of her mental disability, but denial of visitation and termination of parental rights was based solely on the best interests of the child. The ADA must be subordinated to protect the rights of the child. [J.T. v. Ark. Dep't of Human Servs., 329 Ark. 243 \(1997\).](#)

(H) **Criminal Sentence**

The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life. Ark. Code Ann. § 9-27-341(b)(3)(B)(viii).

Appellant argued that the trial court erred in terminating her rights based on the ground that she was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of her child's life. She argued that it was an error for the court to consider her suspended sentence. Appellate review is of the entire sentence and viewed from the child's perspective. The court did not err in finding that the child should not have to wait in limbo for possible reunification with his mother. [Adams v. Ark. Dep't of Human Servs., 2013 Ark. App. 263.](#)

The trial court found that appellant had been sentenced for a substantial period of her child's life given the child's young age at the time of removal and her need for permanency. Appellant argued she could have a meaningful relationship in the context that three years of T.H.'s entire juvenile life was not substantial. The appellate court held that three years based on the facts of the case was substantial when at the time T.H. was removed she was only two. At the time of the termination hearing T.H. was three and a half years old and had already spent 18 months in foster care. If appellant is released as projected T.H. would have spent more than half of her life in foster care with no guarantee that she would be able to return to appellant's custody. [Hill v. Ark. Dep't of Human Servs., 2012 Ark. App. 108.](#)

The circuit court did not err in terminating appellant's parental rights on the ground that the appellant was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the child's life. When the ground under consideration is the length of the prison sentence, the length of the prison sentence can be determinative of the termination decision. [Fields v. Ark. Dep't of Human Servs., 104 Ark. App. 37 \(2008\).](#)

Parent had been sentenced in a criminal proceeding to forty years, a substantial period of time as set forth in the statute. [Thompson v. Ark. Dep't of Human Servs., 59 Ark. App. 141 \(1997\).](#)

(I) **Specific Court Findings**

The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

- (i) Have committed murder or manslaughter of any child; or Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(1).
- (ii) Have aided or abetted, attempted, conspired, or solicited to commit such murder or manslaughter. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(1).

Termination upheld where trial court found that each parent as either an offender or as an accomplice committed a felony battery against another child that resulted in the child's death. Both appellants challenged the sufficiency of the evidence. Appellant Nelson also argued that DHS failed to prove the grounds for termination and that the court erred in not giving her a year to remedy the situation that caused removal.

The termination was granted as to the appellant's child after Nelson's grandchild was seriously injured in their home and died as a result. Todd was charged with capital murder, and after testimony from the termination hearing, the court found that each parent, either as the offender or as an accomplice, had committed a felony battery against the child resulting in the child's death. The doctor's testimony concerning the time and extent of the injuries supported the court's conclusion that Nelson was in the home when the injuries were inflicted, despite her testimony otherwise. Further, the statutory ground relied on in this case allowed for immediate termination. [Todd v. Ark. Dep't of Human Servs., 85 Ark. App. 174 \(2004\).](#)

- (iii) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury; Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(2).

A juvenile court is a court of competent jurisdiction to determine that a parent committed a felony assault that results in serious bodily injury to the child. A criminal conviction is not required. [Brewer v. Ark. Dep't of Human Servs., 71 Ark. App. 364 \(2000\).](#)

Nothing in this chapter shall be construed to require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(b).

- (iv) To have subjected the child to aggravated circumstances, which means as follows:

- (a) A child being abandoned; Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B)(i).

Appellant, minor mother in foster care, challenged the sufficiency of the evidence as to best interest and TPR grounds. The first termination petition was filed in December 2009 based on abandonment when she left her child for over five months when she fled foster care. The trial court continued the goal of reunification with the intent of giving appellant a year to work toward reunification, but made specific findings that appellant abandoned her son and subjected him to aggravated circumstances by fleeing foster care. DHS filed its second TPR petition, and the appellate court affirmed based on aggravated circumstances, including abandonment and that further services would not likely result in reunification. [L.W. v. Ark. Dep't of Human Servs., 2011 Ark. App. 44.](#)

- (b) A child being chronically abused; Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B)(i).

- (c) A child being subjected to extreme or repeated cruelty or sexual abuse; Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B)(i).

TPR affirmed the circuit court's finding of sufficient evidence that appellant failed to consistently attend counseling sessions, and when he did attend those sessions, he failed to address the sexual abuse that caused the removal. [Hall v. Ark. Dep't of Human Servs., 101 Ark. App. 417 \(2008\).](#)

TPR affirmed. Appellant argued that the circuit court erred in basing the TPR finding upon on an issue unrelated to the original adjudication order and that there was insufficient evidence to support the finding that he sexually abused his child. The child was originally adjudicated dependent-neglected for educational neglect; however, during the case, the child disclosed sexual abuse and testified to such at a hearing, along with other witnesses including the investigator. DHS filed for TPR on three grounds, including aggravated circumstances subjecting a child to sexual abuse.

The appellate court noted that the circuit court made explicit findings that the child's statements were credible along with other testimony at the TPR hearing sufficient to establish that the

appellant perpetrated sexual abuse. [Albright v. Ark. Dep't of Human Servs., 97 Ark. App. 277 \(2007\).](#)

- (d) A determination by a judge that there is little likelihood that services to the family will result in successful reunification, [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(ix\)\(a\)\(3\)\(B\)\(i\);](#) or

The appellate court affirmed based on aggravated circumstances, including abandonment and that further services would not likely result in reunification. [L.W. v. Ark. Dep't of Human Servs., 2011 Ark. App. 44.](#)

Appellant argued that the trial court erred in finding that the children had been subject to aggravated circumstances, specifically that the “trial court found that there was little likelihood that services to the family would result in successful reunification.” The court found no error where the parent engaged in repeated cruelty to her children, including physical abuse and failure to protect from physical abuse from a boyfriend. Appellant was offered repeated assistance in Arkansas and Louisiana, yet she failed to avail herself to services, gain employment over a two-year period, complete a GED, or comply with the case plan goals. Her lack of progress demonstrated that despite the offer of services there was little likelihood it would result in reunification with her children. [Davis v. Ark. Dep't of Human Servs., 98 Ark. App. 275 \(2007\).](#)

TPR affirmed based on aggravated circumstances, that there is little likelihood that the services to the family will result in successful reunification. The trial court made eight specific findings of fact to support the TPR ruling. The only challenge made by the appellants was to the finding that the mother had been in counseling for nine years to no effect, despite direct evidence that supported this finding at the TPR provided by Dr. DeYoub, the caseworker, and the mother's older daughter. [Yarborough v. Ark. Dep't of Human Servs., 96 Ark. App. 247 \(2006\).](#)

The trial court's finding of TPR based on aggravated circumstances as to W. was affirmed based on either the fact that appellant's rights had been involuntarily terminated as to D., W.'s older sibling, or the determination by the judge that there was little likelihood that services to the family would result in successful reunification. The court noted that the case had gone on for more than two years, and its resolution was long overdue, especially in

light of the convincing evidence that appellant failed to remedy the serious problems that caused her children's removal. [Trout v. Ark. Dep't of Human Servs., 359 Ark. 283 \(2004\).](#)

- (e) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three times in the last fifteen (15) months. [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(ix\)\(a\)\(3\)\(B\)\(ii\).](#)
- (v) Had parental rights involuntarily terminated as to a sibling of the child, or [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(ix\)\(a\)\(4\).](#)

Although the trial court made a mistake in finding that appellants' rights were involuntarily terminated as to five children, it was of no legal consequence. Appellant had five prior children terminated and only three had been involuntarily terminated in 2010. The ground only requires prior involuntary termination as to a sibling of a child. [Jones v. Ark. Dep't of Human Servs., 2011 Ark. App. 632.](#)

The trial court's finding of TPR based on aggravated circumstances as to W. was affirmed based on either the fact that appellant's rights had been involuntarily terminated as to D., W.'s older sibling, or the determination by the judge that there was little likelihood that services to the family would result in successful reunification. The court noted that the case had gone on for more than two years, and its resolution was long overdue, especially in light of the convincing evidence that appellant failed to remedy the serious problems that caused her children's removal. [Trout v. Ark. Dep't of Human Servs., 359 Ark. 283 \(2004\).](#)

Appellant argued that the trial court erred in using a previous termination of parental rights as a basis for terminating parental rights of another child because the prior termination was pending on appeal. The appellate court affirmed the trial court stating that the appellate review is de novo conducted on a record already made and is not a trial de novo where cases are tried anew. [Larscheid v. Ark. Dep't of Human Servs., 343 Ark. 580 \(2001\).](#)

- (vi) Abandoned an infant, as defined in Ark. Code Ann. § 9-27-303(2). [Ark. Code Ann. § 9-27-341\(b\)\(3\)\(B\)\(ix\)\(a\)\(5\).](#)

Effect of TPR Order

Terminates the parent-child relationship and divests parent and juvenile of all legal rights, powers, and obligations between each other, including the right to withhold consent to adoption. Ark. Code Ann. § 9-27-341(c)(1).

Grandmother's rights are derivative of her daughter's parental rights and as a result were terminated. Consequently, the grandmother did not have a recognized interest in the subject matter of the adoption to warrant her intervention as a matter of right. [Suster v. Ark. Dep't of Human Servs., 314 Ark. 92 \(1993\)](#).

Juvenile's right to inherit from the parent is not terminated until a final order of adoption is entered. Ark. Code Ann. § 9-27-341(c)(1).

Termination of one parental relationship shall not affect the relationship between the other parent and the juvenile if rights have been legally established.

If no legal rights have been established, the putative parent must prove that significant contacts existed with the juvenile in order for such rights to attach. Ark. Code Ann. § 9-27-341(c)(2)(A)(i)-(ii).

When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights. Ark. Code Ann. § 9-27-341(c)(2)(B)(i).

Putative-parent notice shall:

- (1) Identify the rights sought to be terminated and those that may be terminated; and
- (2) Specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach. Ark. Code Ann. § 9-27-341(c)(2)(B)(ii)-(iii).

TPR order may authorize DHS to consent to adoption of the juvenile. Ark. Code Ann. § 9-27-341(c)(3).

Appellant's (although not biological grandparents referred to themselves as grandparents and had cared for the children) sought to adopt E.C. Appellants argued that the court erred in dismissing their petition and granting a petition of adoption to his current foster parent. A petition for adoption may be granted after a determination that the required consents have been obtained or excused and that the adoption is in the best interest of the child. DHS did not consent to appellant's adoption, nor did

appellants ask for a ruling on whether DHS was unreasonably withholding its consent. Further, the evidence supported the court's finding that it was not in E.C.'s best interest to be adopted by the appellants. There was evidence that there were issues with truancy, chronic head lice, inappropriate behavior, and environmental neglect while in appellant's care.

Appellants also argued that the court erred in requesting additional testimony by witnesses after both parties had rested. The trial court relied on Ark. R. Evid. 614 to call witnesses and that all parties are entitled to cross-examine the witness called. The appellate court noted that case law provides for such judicial discretion. "The trial judge has the right and the duty to ask questions to clear up an obscurity in the testimony or even to develop facts in regard to some feature of the case he feels has not been properly developed." [Cowan v. Ark. Dep't of Human Servs., 2012 Ark. App. 576.](#)

Appellants, former foster parents, argued that the court erred in determining that it was not in the best interest of the child to be adopted by the appellants. The issue was whether DHS was unreasonably withholding consent to the adoption petition. The trial court was affirmed in finding that there was insufficient evidence to show that DHS was unreasonably withholding its consent and that the adoption was in the child's best interest. Evidence that supported this decision included information that appellant's adult son lived at their home and had a true finding of having sex with a foster child in appellant's home and that the appellants left children in his care when they were not home. Appellant's uncle lived in a shed on appellant's property and appellants did not file documents required nor did the court find appellants credible. [Lewis v. Ark. Dep't of Human Servs., 2012 Ark. App. 347.](#)

This case involved two competing suitable adoption petitions for B.W. following a TPR, appellants (paternal grandfather and his wife) and appellees (foster parents and adoptive parent of B.W.'s half-brother). Appellant's argument that the court lacked jurisdiction to grant appellees' petition because they did not strictly comply with the home study requirement is without merit. The trial court had jurisdiction and any error relying on the home study should have been raised below and is not preserved for appeal. Appellant then argued that the trial court erred in finding that it was in the B.W.'s best interest to be adopted by appellees because B.W. had spent more time appellees and "most of the factors were a wash." The Court will defer to the trial court's personal observations

when the welfare of a young child is involved. [Wilson v. Golen, 2013 Ark. App. 267.](#)

DHS testified that it was unwilling to consent to the adoption for numerous concerns that the court found were well reasoned, appropriate and in good faith. The trial court found that the appellants had not met the burden of proof by clear and convincing evidence that the adoption was in the children's best interests and stated specific facts to support this finding.

The court of appeals limited its review to the findings of the trial court discounting any finding based on the trial court's conclusion that it should give some deference to DHS's refusal to consent to the adoption. The factual findings of the trial court were sufficient to support a finding of the children's best interest and DHS's consent was not addressed. [Luebker v. Ark. Dep't of Human Servs., 93 Ark. App. 173 \(2005\).](#)

Sibling visitation shall not terminate if the adopted child was in the custody of DHS and had a sibling who was not adopted by the same family and before the adoption the circuit court in the dependency-neglect case or the FINS case determined that it was in the best interest of the siblings to continue visitation and ordered sibling visitation to continue after the adoption. [Ark. Code Ann. § 9-9-215\(c\).](#)

Post-Termination of Parental Rights Review Hearings

Purpose

Court shall determine if case plan, services, and placement meet the special needs and best interest of the child, with the juvenile's health, safety, and educational needs specifically addressed;

Court shall determine if DHS has made reasonable efforts to finalize an appropriate permanent placement for the juvenile; and

Court shall determine if the case plan is moving toward an appropriate permanency plan for the juvenile. [Ark. Code Ann. § 9-27-360\(b\).](#)

Time Constraints

Hearings shall be held at least every six (6) months following an order for termination of parental rights, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that child. [Ark. Code Ann. § 9-27-360\(a\).](#)

DHS and a CASA, if appointed, shall file a review report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, seven (7) business days prior to the scheduled dependency-neglect review hearing. Ark. Code Ann. § 9-27-361(a)(1).

A written order shall be filed and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-360(d).

Court Reports

The DHS court report shall include a summary of the parties' compliance with the court orders and case plan, including a description of services and assistance the department has provided and recommendations to the court. Ark. Code Ann. § 9-27-361(a)(2)(A).

If the child has been returned home, the DHS report shall include a description of any services or requirements of the parents, including, but not limited to, a safety plan to ensure the health and safety of the juvenile in the home. Ark. Code Ann. § 9-27-361(a)(2)(B).

If the child is in DHS custody, the DHS report shall outline DHS's efforts to identify and notify adult grandparents and other adult relatives. It shall include a list all adult grandparents and other adult relatives notified and their response to interest in participating in the care and placement of the child, including foster care, guardianship, and visitation. Ark. Code Ann. § 9-27-361(a)(2)(C).

The CASA report shall include, but is not be limited to:

- (1) Any independent factual information that he or she feels is relevant to the case;
- (2) A summary of the parties' compliance with the court orders;
- (3) Any information on adult relatives including their contact information and the volunteer's recommendation about relative placement and visitation; and
- (4) Recommendations to the court. Ark. Code Ann. § 9-27-361(a)(3)(A)-(D).

At the review hearing, the court shall determine on the record whether the previously filed reports and addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report, part of a report, or addendum that was not admitted into evidence. Ark. Code Ann. § 9-27-361(a)(4)(A)-(B); Ark. Code Ann. § 9-27-361(c).

Court Findings

At the post-TPR hearing, the court shall determine and include in its orders the following:

- (1) Whether the case plan, services, and current placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety and education specifically addressed; Ark. Code Ann. § 9-27-360(b)(1).
- (2) Whether DHS has made reasonable efforts to finalize a permanency plan for the child, Ark. Code Ann. § 9-27-360(b)(2); and
- (3) Whether the case plan is moving toward an appropriate permanency plan. Ark. Code Ann. § 9-27-360(b)(3).

The court shall consider extent of parties' compliance with the case plan and court orders to finalize the permanency plan. Ark. Code Ann. § 9-27-360(c).

XVII. APPEALS

Generally

Appeals shall be made to the Arkansas Supreme Court or Arkansas Court of Appeals in same time and manner as provided for appeals in the Arkansas Rules of Appellate Procedure. Ark. Code Ann. § 9-27-343(a); [Administrative Order Number 14](#).

DHS, although not a party to the original case, had standing to appeal because it first sought relief from the trial court by filing a motion to set aside its September 30 order, and DHS had a final judgment to appeal when the court entered its order denying DHS's motion to set aside. [Ark. Dep't of Human Servs. v. R.P., 333 Ark. 516 \(1998\)](#).

DHS's appeal of the juvenile court's order to place a juvenile in DHS custody at a detention hearing was dismissed for lack of standing. Any relief to which DHS must be entitled must be afforded to the trial court. If DHS contends that the juvenile court is without jurisdiction to place the juvenile in its custody or has exercised a power not authorized by law, its remedy is to seek relief by way of a collateral attack upon the judgment through a writ of prohibition or a petition for writ of certiorari. [Ark. Dep't of Human Servs. v. Strickland, 62 Ark. App. 215 \(1998\)](#).

The court issued a number of orders in a FINS case, and in one ordered DHS to pay for the cost of treatment for a period of time during which Medicaid was denied. DHS is precluded from appealing because it was not a party to the litigation. Its appearances and involvement were pursuant to its obligations under the Juvenile Code, and it entered no appearance by any type of pleading until after the case had been dismissed. [Ark. Dep't of Human Servs. v. Bailey, 318 Ark. 374 \(1994\)](#).

Delinquency

Petitioner may appeal only under circumstances that would permit the State to appeal in criminal proceedings. Ark. Code Ann. § 9-27-343(b).

Appellant argued that the trial court erred in denying her motion to dismiss based on deficiencies in the delinquency petition. The proper time to object to an indictment or information is prior to trial. Appellant is barred from raising this on appeal because she failed to properly object prior to trial. [L.C. v. State, 2012 Ark. App. 666](#).

A court does not have the authority to nolle pros on its own motion. The state appealed the trial court for granting a motion to dismiss for violation of speedy trial. The State's right to appeal is limited to Rule 3 of Arkansas Rules of

Appellate Procedure – Criminal. The rule requires review for the correct and uniform administration of law, independent of facts. The state’s argument on appeal was dismissed because it involved unique facts and circumstances, not the uniform administration of law. [State v. S.L., 2012 Ark. 73.](#)

The Arkansas Supreme Court applied the contemporaneous-objection rule, holding that it will not consider arguments on appeal that were not raised in the trial court. [McClure v. State, 328 Ark. 35 \(1997\).](#)

*The Arkansas Supreme Court held that the provisions of *Anders v. California*, 386 U.S. 738 (1967), which protect an adult appellant’s right to counsel on appeal, apply also to an appeal of an adjudication of juvenile delinquency. [Gilliam v. State, 305 Ark. 438 \(1991\) \(per curiam\).](#)*

An appeal of a pre-adjudication detention order is not a final order; therefore, it is not appealable. [K.W. v. State, 327 Ark. 205 \(1997\).](#)

The juvenile appealed an order of the juvenile court that granted the State’s motion to nolle prosequi three counts of committing a terroristic act. The Arkansas Court of Appeals stated that no appeal can be taken from an order to nolle prosequi because under Arkansas Rule of Criminal Procedure 36.1 only a person convicted of a crime has the right to appeal. [Webb v. State, 48 Ark. App. 216 \(1995\).](#)

Waiver & Transfers

Waiver and transfer decision is an appealable order. [Ark. Code Ann. § 9-27-318\(l\).](#)

Appellant argued that the circuit court abused its discretion in allowing two witnesses to testify at the transfer hearing that were not disclosed in discovery and other issues that were not addressed on appeal. The Supreme Court noted that “the State blatantly violated Rule 17.1 [of the Arkansas Rules of Criminal Procedure] by refusing to offer the witnesses’ names to the defense until late afternoon before the hearing.” The State also violated the circuit court’s discovery order, which had been extended. The court found that the violation of the rule and trial court’s order offended the notion of fair play, was highly prejudicial, and was not harmless error. [N.D. v. State, 2011 Ark. 282.](#)

The appellate standard of review in juvenile transfer matters is whether the circuit court’s motion to transfer was clearly erroneous. [Jones v. State, 332 Ark. 617 \(1998\); Landrum v. State, 63 Ark. App. 12 \(1998\).](#)

The court adopted a prospective rule that an appeal from an order concerning a juvenile transfer from one court to another court with jurisdiction must be considered by way of an interlocutory appeal. A juvenile cannot challenge

transfer orders from juvenile to circuit court on direct appeal from a judgment or conviction of the circuit court. [Hamilton v. State, 320 Ark. 346 \(1995\).](#)

Appeal did not satisfy Rule 36.10, which requires prejudicial error. [State v. Gray, 319 Ark. 356 \(1995\).](#)

Any party may appeal an order granting or denying transfer. [Ark. Code Ann. § 9-27-318\(l\).](#)

The Supreme Court found that Arkansas Rule of Appellate Procedure - Criminal 3 was incompatible with Arkansas Code Annotated section 9-27-313(l), that provides that any party can appeal a transfer order. Rule 3 governs and since this is not one of the types of interlocutory appeals permitted by the rule the court dismissed the State's appeal. [State v. A.G., 2011 Ark. 244.](#)

Dependency-Neglect Appeals

The following orders may be appealed from any dependency-neglect proceeding:

- (1) Adjudication order;
- (2) Disposition, review, no reunification, and permanency-planning order if the court directs entry of a final judgment as to one or more of the issues or parties and upon the express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Rule 54(b) of the Arkansas Rules of Civil Procedure.
- (3) Termination of parental rights,
- (4) Denial of the right to appointed counsel pursuant to Ark. Code Ann. § 9-27-316(h);
- (5) Denial of a motion to intervene. Ark. Sup. Ct. R. 6-9(a)(1).

Time Constraints

Notice of appeal shall be filed within twenty-one (21) days from the entry of the circuit court order from which the appeal is taken. [Ark. Sup. Ct. R. 6-9\(b\)\(1\).](#)

Any other party may file a notice of cross-appeal and designation of the record within five (5) days from receipt of the notice of appeal. [Ark. Sup. Ct. R. 6-9\(b\)\(3\).](#)

If appellant alleges indigency for purposes of appeal, the appellant shall file a motion, with notice to all parties, to request an indigency determination within fourteen (14) days following the entry of the order from which the appeal is taken. [Ark. Sup. Ct. R. 6-9\(b\)\(2\).](#)

Court shall rule on indigency motion within five (5) days of the indigency motion being filed. [Ark. Sup. Ct. R. 6-9\(b\)\(2\)\(B\)](#).

The circuit court's finding that appellant was not indigent for the purpose of his TPR appeal was affirmed. At a hearing on appellant's indigency motion, the circuit court noted that his affidavit was not sworn to, and, without objection, took judicial notice that appellant testified at the TPR hearing that he made \$2100 per month. The burden of establishing indigency is on the person claiming indigency status and is a question of law and fact. The circuit court is directed to use the federal poverty guidelines in determining indigency. [Cordero v. Ark. Dep't of Human Servs., 2014 Ark. 64](#).

The record for appeal shall be filed with the Clerk of the Supreme Court within seventy (70) days of filing the notice of appeal. The court reporter shall provide the record to the circuit clerk within sixty (60) days of the notice of appeal, and the circuit clerk shall have no longer than five (5) days to prepare the record. [Ark. Sup. Ct. R. 6-9\(d\)](#).

Appellant shall file an original petition and sixteen (16) copies within thirty (30) days after transmission of the record to the Clerk of the Supreme Court. [Ark. Sup. Ct. R. 6-9\(e\)\(1\)](#).

An appellee may file a response to the petition or cross-appeal within twenty (20) days after the filing of the appellant's petition on appeal. [Ark. Sup. Ct. R. 6-9\(f\)\(1\)](#).

Appellant will have ten (10) days to reply to appellee's response or the petition on cross-appeal. Appellee will have ten (10) days to reply to appellant's response to the petition on cross-appeal. [Ark. Sup. Ct. R. 6-9\(f\)\(3\)](#).

Petitions for rehearing or review with the Supreme Court shall be filed within ten (10) days. [Ark. Sup. Ct. R. 6-9\(j\)\(2\)](#).

The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to the hearing, and all exhibits entered into evidence at that hearing, and all orders entered in the case prior to the order on appeal. [Ark. Sup. Ct. R. 6-9\(c\)\(1\)](#).

Appellant failed to appeal adverse rulings from the adjudication hearing and she is barred from raising them now. [Hannah v. Ark. Dep't of Human Servs., 2013 Ark. App. 502](#).

*Appellant argued that he trial court erred in relying on a repealed statute to incorporate testimony from prior proceedings into its decision to terminate parental rights and in granting DHS' motion to incorporate the record from prior pleadings and testimony in the case. The Court of Appeals distinguished this case from *Payne v. Arkansas Dept. of Human Services, 2013 Ark. 284*, which was a no*

merit appeal. The Court of Appeals held that appellant's argument must fail because Ark. Sup. Ct. R. Rule 6-9(c)(1) limits the record for appeal. The Court further found that Smith v. Arkansas Dept. of Human Services, 100 Ark. App. 74, was controlling and does not limit what evidence may be considered by the trial court in a termination proceeding. Further, appellant cannot show prejudice by errors in the termination order. [Saimon v. Ark. Dep't of Human Servs., 2013 Ark. App. 532](#); [Kelso v. Ark. Dep't of Human Servs., 2013 Ark. App. 509](#).

The appellate court must consider everything the trial court considered in making its determination that it was in the child's best interest not to be in the care of the mother. The circuit court considered evidence in its final order, including the previous testimony of appellant that was not made part of the record. The appellate court noted that the trial court and attorneys failed to formally enter it into evidence. Case remanded and supplemental record ordered to be filed with appellant's testimony and anything else that was relevant to termination hearing and the final order of the circuit court. Rebriefing in the Court of Appeals. [Payne v. Ark. Dep't of Human Servs., 2013 Ark. 284](#).

The TPR hearing was held on June 15, 2006, and the TPR order was entered on July 13, 2006, after Arkansas Supreme Court Rule 6-9 became effective. DHS alleged the appellant's record was deficient because he did not include all relevant orders in the record. The court found that the "rules limit the 'entire record' to the transcript of the termination from the which the termination order on appeal arose; any petitions, pleadings, and orders relevant to the termination hearing and all exhibits entered into evidence at the termination hearing. Ark. Sup. Ct. R. 6-9(c)(1)." All orders relied upon by the circuit court are relevant. The burden is on the appellant to file a proper record to demonstrate that the trial court was in error. Appellant's failure to do so resulted in a dismissal of the appeal. [Busbee v. Ark. Dep't of Human Servs., 369 Ark 416 \(2007\)](#).

The petition on appeal (Form 2) shall not exceed twenty-five (25) pages, excluding the abstract and addendum, and shall be bound and include:

- (1) A statement of the nature of the case and the relief sought;
- (2) A concise statement of the material facts as they relate to the issues presented in the petition on appeal that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court;
- (3) An abstract or abridgment of the transcript that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision;

- (4) A concise statement of the legal issues presented for appeal, including a statement of how the issues arose; and a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised;
- (5) An addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, or letter opinion from which the appeal is taken, a copy of the notice of appeal, and any other relevant pleadings, documents, or exhibits essential to an understanding of the case. [Ark. Sup. Ct. R. 6-9\(e\)](#).

The response (Form 3) to the petition on appeal or cross-appeal shall be bound and not exceed twenty-five (25) pages, excluding the abstract and addendum, and shall include:

- (1) A concise statement of the material facts as they relate to the issues presented by the appellant, as well as the issues, if any, being raised by the appellee on cross-appeal, that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court;
- (2) A concise response to the legal issues presented on appeal and cross-appeal, if any, including a statement of how the issue arose; a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised; and
- (3) If the appellee considers the appellant's abstract or addendum to be defective or incomplete, the appellee may provide a supplemental abstract or addendum. The appellee's addendum shall only include an item which the appellant's addendum fails to include. [Ark. Sup. Ct. R. 6-9\(f\)](#).

Procedure for No Merit Petitions, Pro Se Points, and State's Response

If counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. Counsel's no-merit petition must include the following:

- (1) The argument section shall list all adverse rulings to appellant made by the circuit court on all objections, motions, and request made by the party at the hearing and must explain why each adverse ruling is not a meritorious ground for reversal.
- (2) The abstract and addendum shall contain all rulings by the circuit court at the hearing that are adverse to the appellant.

Appellees are not required to, but may, respond to a no-merit petition. Appellees may file a concurrence letter supporting the no-merit petition. Any response by an appellee shall be filed within twenty (20) days of the filing of the no-merit petition.

The Clerk of the Supreme Court shall mail the appellant a copy of the no-merit petition and the motion to withdraw at the appellant's last known address. The Clerk shall notify appellant in writing the appellant may raise any points and that these points may be typewritten or hand-printed. The Clerk shall also notify appellant that these points shall be received by the Clerk by mail or other method of delivery within thirty (30) days from the date the Clerk mailed the appellant the notification.

The Clerk shall provide appellant's points by electronic transmission or other method of delivery to DHS-OCC, AAL, and appellant's counsel within three (3) business days.

Appellees are not required to respond to appellant's points; however, appellees may do so by filing such response within twenty (20) days of the receipt by the Clerk. [Ark. Sup. Ct. R. 6-9 \(i\)\(1\)-\(5\)](#). See [In Re Amendments to Rules of Civil Procedure; Rules of the Supreme Court; Rules of Appellate Procedure – Civil; District Court Rules; and Administrative Orders, 2014 Ark. 119 \(per curiam\) \(amendments effective July 1, 2014\)](#).

Linker-Flores I sets forth the no-merit procedure in termination of parental right appeals. The attorney may petition to withdraw only after a conscientious review of the record in which counsel can find no issue of arguable merit for appeal. Counsel's petition must be accompanied by a brief discussing any arguably meritorious issue for appeal. The court of appeals cited Linker-Flores II and Lewis. In the Lewis case, the Supreme Court held that: "a conscientious review of the record requires the appellate court to review all pleadings and testimony in the case on the question of sufficiency of the evidence supporting the decision to termination when the trial court has taken the prior record into consideration in its decision." The Supreme Court further held that only adverse rulings arising at the termination hearing need be addressed . . . because the prior orders are considered final appealable orders pursuant to Rules 2(c)(3) of the Arkansas Rules of Appellate Procedure—Civil.

The trial court's findings constituted more than clear and convincing evidence to terminate parental rights. The only other adverse ruling of the trial court was the denial of the motion for a continuance. TPR affirmed and counsel's motion to withdraw granted. [Smith v. Ark. Dep't of Human Servs., 93 Ark. App. 395 \(2005\)](#).

The court of appeals ordered rebriefing in accord with Linker-Flores v. Arkansas Department of Human Services, 364 Ark., 217 S.W.3d 107 (2005) (Linker-Flores II) to address the adverse rulings made at the termination of parental rights hearing. The attorney petitioned the court to reconsider rebriefing and filed an

attachment to her petition that specifically addressed all the adverse rulings in the termination hearing, indicating that they had no merit for appeals purposes. The court of appeals treated the attorney's petition as a petition for rehearing. After a review of the record and all adverse rulings, the court affirmed without rebriefing and granted the attorney's petition to withdraw as counsel. [Causer v. Ark. Dep't of Human Servs., 93 Ark. App. 483 \(2005\)](#).

Flores I was the first time the Arkansas Supreme Court addressed the specific procedures required for a termination of parental rights no-merit brief. The supreme court stated that under Arkansas Supreme Court Rule 4-3(j), no-merit briefs in termination of parental rights cases shall include an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections; motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. In this case, in review of the TPR hearing, the record revealed three adverse ruling that were not abstracted or included in the argument section. The court addressed each of these rulings and found no error. However, the court stated that if a no-merit brief fails to address all adverse rulings, the court will send it back for rebriefing, but it wanted to avoid further delay in this case.

The only issue presented in the no-merit brief filed by counsel was whether there was clear and convincing evidence to support the termination. The parent counsel's motion to withdraw was granted and the TPR was affirmed. Appellant failed to remedy the situation that caused her children to come into care despite DHS's meaningful efforts to rehabilitate the home and correct the conditions that caused removal. Appellant failed to maintain stable housing, blamed her children for DHS's involvement, had numerous interruptions in therapy due to multiple incarcerations, and was incarcerated again at the time of the termination hearing. She failed to protect her children from abuse and when she eventually acknowledged their abuse one doctor testified that she had no idea whatsoever of the magnitude of the abuse.

The court also requested the Arkansas Supreme Court Ad Hoc Committee on Foster Care and Adoption to make recommendations for changes in the court's rules of appellate procedure to expedite these appeals. [Linker-Flores v. Ark. Dep't of Human Servs., 364 Ark. 224 \(2005\)](#) (Linker-Flores II); [Linker-Flores v. Ark. Dep't of Human Servs., 359 Ark. 131 \(2004\)](#) (Linker-Flores I).

This case was certified from the Arkansas Court of Appeals to address the issue of whether the no-merit brief must address all adverse ruling in all the hearings or just the TPR hearing. The first question is whether the list of all rulings adverse to the defendant specified under Arkansas Supreme Court Rule 4-3(j)(1) includes all hearings in the record or only the termination hearing. Under the rules of appellate procedure, specifically Arkansas Rules of Appellate Procedure - Civil

2(c)(3), the review of the record for adverse rulings is limited to the termination hearing because a party is entitled to appeal final orders from the adjudication, review, and permanency planning hearings.

However, a conscientious review of the record under Linker-Flores II requires the court to examine all evidence from all hearings and proceedings in the case when the trial court takes judicial notice and incorporates by reference into the record at the termination hearing all pleadings and testimony in the case that occurred before the termination hearing.

Under Arkansas Supreme Court Rule 4-3(j), no-merit briefs in termination of parental rights cases shall include an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. In this case, a review of the TPR hearing record revealed four adverse rulings that were not abstracted or included in the argument section. The court addressed each of these rulings in turn and found no error, but noted that if a no-merit brief fails to address all adverse rulings, the court will send it back for rebriefing.

TPR affirmed and attorney's motion to withdraw was granted. There was clear and convincing evidence that the children had been correctly adjudicated dependent-neglected. The children continued out of the parents' home for 17 months despite DHS efforts to provide services to remedy the situation. The father failed to rehabilitate the condition that caused removal in a reasonable amount of time and manifested an incapacity and indifference to remedy the conditions that caused removal, including failing to maintain stable housing and employment, provide child support, or comply with the orders of the court. [Lewis v. Ark. Dep't of Human Servs., 364 Ark. 243 \(2005\).](#)

The trial court terminated appellants' parental rights in March 2003. TPR affirmed as to father where evidence showed that he failed to address his alcohol and anger-management problems. He failed to establish stable and appropriate housing for the children and, at the time of termination, he lived in an apartment with five or six men and at times in a hotel when the apartment became too crowded, despite referrals for housing for his two girls, ages ten and two.

*Counsel for the mother filed a motion to be relieved of counsel on grounds that she could find no meritorious issue for appeal. In March 2004, the court denied counsel's motion to be relieved and ordered the parties to brief the issue of whether counsel representing a parent in a TPR case should be required to file a no-merit brief, pursuant to *Anders v. California*, 386 U.S. 738 (1967). The court held that indigent parents have a right to counsel on appeal. An indigent's right to counsel outweighs any additional time required for *Anders* procedures. *Anders**

procedures shall apply in cases of indigent parents' appeals of a TPR. On a first TPR appeal, counsel may petition to withdraw, if after conscientious review of the record, counsel can find no issue of arguable merit for appeal. Counsel's petition must be accompanied by a brief discussing any arguably meritorious issue for appeal. The indigent parent must be provided with a copy of the brief and notified of his or her right to file and points for reversal within thirty days. The court will determine after full examination of the record if the appeal is frivolous. The court may grant dismissal or appoint new counsel to argue the appeal.

[Linker-Flores v. Ark. Dep't of Human Servs., 359 Ark. 131 \(2004\).](#)

Trial Counsel's Duties

Trial counsel shall explain to his or her client all rights regarding any possible appeal, including deadlines, the merits, and likelihood of success of an appeal.

If appellant is indigent, trial counsel shall file a motion seeking an indigency determination with the circuit court and ensure that appellant has signed the notice of appeal pursuant to Rule 6-9.

Trial counsel who represent indigent parents and custodians shall serve the Arkansas Public Defender Commission by electronic submission or other method of delivery a file-marked copy of the notice of appeal and the order(s) that are being appealed within three (3) business days of filing the notice of appeal with the circuit clerk.

Trial counsel shall timely respond to all reasonable requests for information to the Arkansas Public Defender Commission for purpose of appeal. Trial counsel for indigent parents or custodians shall not be relieved as counsel for the purpose of appeal until the Arkansas Public Defender Commission timely receives the properly filed notice of appeal, questionnaire, and the order(s) appealed.

The Arkansas Public Defender Commission shall send confirmation of receipt to trial counsel. This confirmation shall operate to relieve trial counsel of representation of the client for the limited purpose of appeal, and no motion to be relieved will need to be filed with the appellate court.

The circuit court shall retain jurisdiction of the dependency-neglect case and conduct further hearings as necessary. Trial counsel, retained or appointed, shall continue to represent the client in a dependency-neglect case in the circuit court throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the circuit court to withdraw in the interest of justice or for other sufficient cause.

After the notice of appeal is filed with the circuit court, the appellant court shall have exclusive jurisdiction to relieve counsel for the purpose of appeal, except for subsection All substitute counsel shall file an entry of appearance with the Arkansas Supreme Court. [Ark. Sup. Ct. R. 6-10.](#)

Out-of-Home Placements

Pending an appeal from any case involving a juvenile out-of-home placement, the juvenile court retains jurisdiction to conduct further hearings. [Ark. R. App. P.—Civ. 2\(c\)\(2\)](#).

In juvenile cases where an out-of-home placement has been ordered, the following orders are final, appealable orders:

- (1) Adjudication and disposition hearings;
- (2) Review and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Arkansas Rule of Civil Procedure 54(b); and
- (3) Termination of parental rights. [Ark. R. App. P.—Civ. 2\(c\)\(3\)](#).

XVIII. FEES, COSTS, FINES AND RESTITUTION

Fees

No fees, including, but not limited to, fees for filings, copying, or faxing, including petitions for guardianship or adoption, summons, or subpoenas, shall be charged or collected by the clerk or sheriff's office in cases brought in the circuit court pursuant to juvenile code by a nonprofit corporation, governmental entity, prosecuting attorney, attorney ad litem, or DHS. Ark. Code Ann. § 9-27-310(e).

Attorneys' Fees

The court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile after review of an affidavit of financial means, completed and verified by the parent, and a determination by the court of the ability to pay. Ark. Code Ann. § 9-27-316(b)(2).

Court shall order financially able parents or custodians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation of parent or guardian after a review of an affidavit of financial means, completed and verified by the parent, and a determination by the court of ability to pay. Ark. Code Ann. § 9-27-316(h)(5)(A).

Court Costs

Court may order juvenile adjudicated delinquent, his or her parent, both parents, or guardian to pay court costs not to exceed \$35. Ark. Code Ann. § 9-27-330(a)(6); Ark. Code Ann. § 9-27-367(a)(1).

Court may assess an adjudicated FINS court costs not to exceed \$35 to be paid by the juvenile, his or her parent, both parents, guardian, or custodian. Ark. Code Ann. § 9-27-332(a)(8); Ark. Code Ann. § 9-27-367(a)(2).

Probation Fee

The court may order a probation fee for juveniles adjudicated delinquent not to exceed twenty dollars (\$20.00) per month as provided under section 9-27-330(a)(5). Ark. Code Ann. § 9-27-367(a)(3).

Juvenile Diversion Fee

A juvenile intake or probation officer may charge a diversion fee only after review of an affidavit of financial means and a determination of ability to pay of the juvenile, parents, guardians, or custodians. Ark. Code Ann. § 9-27-323(i)(1).

The diversion fee shall not exceed \$20 per month. Ark. Code Ann. § 9-27-323(i)(2); Ark. Code Ann. § 9-27-367(a)(7).

The court may direct that the fees be collected by the juvenile officer, sheriff, or court clerk for the county in which the fees are charged. Ark. Code Ann. § 9-27-323(i)(3).

The officer designated to collect diversion fees shall maintain receipts and account for all incoming fees and shall deposit the fees at least weekly in the county treasury of the county where the fees are collected and the diversion services provided. Ark. Code Ann. § 9-27-323(i)(4).

The diversion fees shall be deposited in the account with the juvenile service fee in accordance with Arkansas Code Annotated section 16-13-326. Ark. Code Ann. § 9-27-323(i)(5); Ark. Code Ann. § 9-27-367(b).

Judicial districts with more than one county may designate the treasurer of one county as the depository of all the juvenile fees; however, the treasurer shall maintain separate account for the fees collected and expended in each county. Ark. Code Ann. § 9-27-323(j)(1)-(2).

Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year. Ark. Code Ann. § 9-27-323(j)(3).

These funds shall be used by agreement of the judges who hear juvenile cases and the quorum court to provide services and supplies to juveniles at the discretion of the juvenile division of circuit court. Ark. Code Ann. § 9-27-323(j)(4).

Juvenile Service Fee

Court may order juvenile service fee not to exceed \$20 a month to be paid by juvenile, his or her parent, both parents, guardian, or custodian as a disposition following a FINS adjudication. Ark. Code Ann. § 9-27-332(a)(9); Ark. Code Ann. § 9-27-367(4).

Family Services

In all cases in which family services are ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay, in whole or in part, for said services. Ark. Code Ann. § 9-27-333(e)(1); Ark. Code Ann. § 9-27-335(c)(1).

The court's finding and supporting evidence shall be made in writing in the order requiring family services. Ark. Code Ann. § 9-27-333(e)(2).

If the court determines that the parent, guardian or custodian is able to pay, in whole or part, for said services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian can pay for the family service(s) ordered, and ordering the parent, guardian, or custodian to pay such amount periodically to the provider from whom family services are received. Ark. Code Ann. § 9-27-333(e)(3).

“Periodically” is deemed to be a period of time no more than one time per month.

Parent, guardian, and custodian refer to the individual or individuals from whom custody was removed. Ark. Code Ann. § 9-27-333(e)(4).

In making its determination, the court shall consider the following factors:

- (1) the financial ability of the parent, both parents, guardian, or custodian to pay for such services;
- (2) the past efforts of the parent, both parents, guardian, or the custodian to correct the conditions which resulted in the need for family services; and
- (3) any other factors that the court deems relevant. Ark. Code Ann. § 9-27-333(e)(5).

Circuit Court Juvenile Division Fund

All court costs, fines, and fees assessed by the juvenile division of the circuit court shall be deposited and accounted for by the county in which they are received. Ark. Code Ann. § 16-13-326(a)(1).

The court shall have the authority to direct that the fees, court costs, and fines shall be collected by either the juvenile officer, the sheriff, or the clerk of the juvenile division of the circuit court or other person designated by the court for the county in which the fees, court costs, and fines are charged. Ark. Code Ann. § 16-13-326(a)(2).

The officer designated by the court to collect juvenile fees, court costs, and fines shall deposit the fees, court costs, and fines into the appropriate fund and monthly deposit the fees, court costs, and fines into the fund in the county treasury of the county where the fees are collected. Ark. Code Ann. § 16-13-326(b)(1).

In a judicial district with multiple judges designated to hear juvenile cases in the district plan under Supreme Court Administrative Order Number 14, the majority of the judges shall determine who is to be in charge of the collection and accounting of fees, court costs, and fines. Ark. Code Ann. § 16-13-326(b)(2)(A); [Administrative Order Number 14](#).

If there is no majority, the administrative judge is to determine who shall be in charge of the collection and accounting of fees, court costs, and fines as provided by this section. Ark. Code Ann. § 16-13-326(b)(2)(B).

However, in judicial districts having more than one (1) county, the majority of the judges or the administrative judge may designate the treasurer of one (1) of the counties in the district as the depository of all juvenile and diversion fees, court costs, and fines collected in the district. Ark. Code Ann. § 16-13-326(b)(3)(A).

The treasurer so designated by the court shall maintain a separate account of the juvenile fees, court costs, and fines collected in each county in the district so that fees, court costs, and fines collected in a county are spent to support the juveniles and

juvenile division court services and programs in that county. Ark. Code Ann. § 16-13-326(b)(3)(B).

Money remaining at the end of the fiscal year shall not revert to any other fund but shall remain in the circuit court juvenile division fund and carry over to the next fiscal year. Ark. Code Ann. § 16-13-326(b)(3)(C).

The funds derived from the collection of juvenile fees, court costs, and fines shall be used by agreement of the judge or judges of the circuit court designated to hear juvenile cases in the district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, and the quorum court of the county to provide services and supplies to juveniles and support court programs at the discretion of the juvenile division of circuit court, including without limitation:

- (1) Juvenile drug courts;
- (2) Teen courts;
- (3) Volunteer probation programs;
- (4) Court-appointed special advocates; and
- (5) After-school and community-based programs. Ark. Code Ann. § 16-13-326(c).

Restitution

Court may order juvenile adjudicated delinquent or parent to pay restitution only after the loss caused by juvenile is proved by a preponderance of the evidence, that the specific damages were caused by the juvenile and that the juvenile's actions were the proximate cause of the damage. Ark. Code Ann. § 9-27-331(e)(1).

Restitution is limited to \$10,000. Ark. Code Ann. § 9-27-331(e)(2).

The trial court ordered appellants to make restitution on destroyed property in an amount exceeding \$2,000.00 pursuant to Acts 61 and 62 of 1994, which raised the limit to \$10,000.00. However, the property was destroyed on April 2, 1994, and the new legislation did not take effect until August 26, 1994.

Restitution is a penalty that falls within the constitutional prohibition of ex post facto laws, and therefore an increase in the amount of restitution constitutes the increase of a penalty. The scheme of the legislation is punitive because it allows for revocation of probation if restitution is not paid. The statutory limits on restitution apply to each victim. Further, the proof admitted of one victim's damages was hearsay because the only evidence presented was an invoice for repairs. [Eichelberger v. State, 323 Ark. 551 \(1996\)](#).

The Arkansas Supreme Court held that the limit on restitution applies only to “one loss” and not to a “multiplicity of crimes.” [Leach v. State, 307 Ark. 201 \(1991\).](#)

Fines

Court may order juvenile adjudicated delinquent, a parent, both parents, or guardian to pay a fine not to exceed \$500. [Ark. Code Ann. § 9-27-330\(a\)\(8\); Ark. Code Ann. § 9-27-367\(a\)\(5\).](#)

Court may order a fine not to exceed \$500 to be paid by the juvenile, parent, both parents, guardian, or custodian as a FINS disposition upon finding the juvenile has exceeded the number of excessive unexcused absences. [Ark. Code Ann. § 9-27-332\(a\)\(7\); Ark. Code Ann. § 9-27-367\(a\)\(6\).](#)

Nonpayment of Restitution, Fines and Court Costs

Nonpayment of restitution, fines, or court costs may constitute violation of probation. [Ark. Code Ann. § 9-27-339\(f\)\(1\).](#)

Burden of proof

Prosecutor’s burden of proof by a preponderance of the evidence that the juvenile violated the terms and conditions of probation. [Ark. Code Ann. § 9-27-339\(e\).](#)

Nonpayment of restitution, fines or court costs may constitute violation of probation unless juvenile proves that his default:

- (1) was not attributable to a purposeful refusal to obey the court;
- (2) was not due to a failure on his part to make a good faith effort to obtain funds required for payment. [Ark. Code Ann. § 9-27-339\(f\)\(1\).](#)

Court shall consider juvenile’s employment status, earning ability, financial resources, willfulness of juvenile’s failure to pay, and any other circumstances that may have a bearing on juvenile’s ability to pay. [Ark. Code Ann. § 9-27-339\(f\)\(2\).](#)

If court determines the juvenile’s default in payment is excusable, the court may enter an order:

- (1) allowing the juvenile additional time for payment;
- (2) reducing the amount of each installment; or
- (3) revoking the fine, costs, restitution, or unpaid portion in whole or in part. [Ark. Code Ann. § 9-27-339\(f\)\(3\).](#)

The Arkansas Supreme Court held that the doctrine of sovereign immunity precludes the assessment of costs and restitution against DHS for children who are in the DHS's custody. The court further held that criminal contempt cases constitute an exception to the sovereign immunity doctrine and that a state agency or agent, having full knowledge of a court order and its import, cannot disregard it and claim "sovereign immunity" in response to a contempt citation. [Ark. Dep't of Human Servs. v. State, 312 Ark. 481 \(1993\).](#)

XIX. MISCELLANEOUS

Educational Rights of Foster Children

Foster children shall have continuity in their educational placements. Ark. Code Ann. § 9-28-113(b)(1).

DHS shall consider continuity of educational services and school stability in making foster care placements. Ark. Code Ann. § 9-28-113(b)(2).

Local school districts shall allow a foster child to remain in his or her current school and continue his or her education, unless the court finds that the placement is not in the child's best interest and conflicts with other law, excluding the residency requirements pursuant to Arkansas Code Annotated section 6-18-202. Ark. Code Ann. § 9-28-113(b)(3).

School districts are encouraged to arrange for transportation if reasonable and practical. Ark. Code Ann. § 9-28-113(b)(4).

Except for emergencies, before moving a child from his or her current school, DHS shall provide a written explanation for the school change to the foster child, the AAL, CASA (if appointed), and the parents, guardians, or any person appointed by the court. Ark. Code Ann. § 9-28-113(b)(5).

Every school district shall identify a foster care liaison, and the liaison's duties shall include: Ark. Code Ann. § 9-28-113(c)(1), (3).

Ensuring and facilitating the timely school enrollment of foster children. Ark. Code Ann. § 9-28-113(c)(3)(A).

Assisting foster children when transferring schools by ensuring the transfer of credits, records, grades, and any other relevant school records. Ark. Code Ann. § 9-28-113(c)(3)(B).

With regard to expediting the transfer of school records, the liaison in the new school must request records within three (3) school days from child's previous school, and the liaison from the previous school must provide records within ten (10) school days. Ark. Code Ann. § 9-28-113(c)(3)(B)(ii)-(iii).

If a foster child is subject to a school enrollment change, the child's caseworker shall notify the school district foster-care liaison within two (2) business days, and the new school must immediately enroll the foster child even if the foster child is lacking required clothing or records. Ark. Code Ann. § 9-28-113(d)(1).

DHS shall provide all known information to the school district that would have an impact on the health and safety of the child being enrolled and others in the school. Ark. Code Ann. § 9-28-113(d)(2).

School districts shall recognize the rights of foster parents pursuant to IDEA, if the foster parent is qualified. A foster parent may have educational rights to consent to an IEP and related services if the court has specifically limited the educational rights of the parent, and the child is in foster care. Ark. Code Ann. § 9-28-113(e)(1)-(2).

The grades of a foster child may not be lowered due to a change in a child's school enrollment, attendance at a dependency-neglect court proceeding, or court-ordered counseling or treatment. Ark. Code Ann. § 9-28-113(f)(1)-(3).

Each school district shall accept credit course work when the student demonstrates that he or she satisfactorily completed the appropriate education placement assessment. Ark. Code Ann. § 9-28-113(g).

If a child completes the graduation requirements of his or her school district while being detained in a juvenile detention or DYS, the school district that the child last attended shall issue the child a diploma. Ark. Code Ann. § 9-28-113(h).

Nothing in this section shall be interpreted to be in conflict with IDEA. Ark. Code Ann. § 9-28-113(i).

If in the best interest of the foster child, he or she may be placed in a nonpublic school as long as no state or federal funding is used for such placement. Ark. Code Ann. § 9-28-113(j).

Foster Care School Notification

DHS shall notify a child's current school by the next business day when DHS has placed a 72-hour hold on a child or when the court has placed custody with DHS. Ark. Code Ann. § 9-28-112(b).

DHS shall notify the child's current school by the next business day when the foster child transfers to a new placement. Ark. Code Ann. § 9-28-112(c).

DHS may notify the school counselor by the next business day after DHS reasonably believes that a foster child has experienced a traumatic event. Ark. Code Ann. § 9-28-112(d).

DHS may notify the school counselor by the next business day after DHS knows through an investigation or ongoing protective services case that a foster child has experienced a traumatic event. Ark. Code Ann. § 9-28-112(e).

When appropriate, the school counselor may share information provided by DHS with the principal and child's teachers. Ark. Code Ann. § 9-28-112(f).

DHS or its designee, including a foster parent, shall make educational decisions for the child on all general education matters, subject to the court. Ark. Code Ann. § 9-28-112(g)(1).

For educational matters under the IDEA Act, a foster parent may make decision for a child in the custody of the department. Ark. Code Ann. § 9-28-112(g)(2).

Foster Care Placements

If a foster parent requests a foster child be removed from his or her home at any time, excluding an emergency that places the child or a family member at risk of harm, then the foster parent shall attend a staffing that shall be arranged by the Division of Children and Family Services of DHS within forty-eight (48) hours to discuss what services or assistance is needed to stabilize the placement. Ark. Code Ann. § 9-28-109(b)(1).

The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the child's placement. Ark. Code Ann. § 9-28-109(b)(2).

If the placement cannot be stabilized, the foster parent shall continue to provide for the foster child for up to five (5) days until an appropriate alternative placement is located. Ark. Code Ann. § 9-28-109(b)(3).

Other changes in placement shall be made only after notification of the foster child, foster parent or parents, child's attorney ad litem, child's birth parents, and court having jurisdiction over the child. Ark. Code Ann. § 9-28-109(c)(1).

The notices shall be sent in writing two (2) weeks prior to the proposed change, unless the current placement is a temporary placement (as defined in (d)(1) – placement intended to be temporary until a stable placement can be located in accordance with policy) and shall specify the:

- (1) Reasons for the proposed change;
- (2) Convey to the attorney ad litem the address of the proposed new foster home or placement provider; and
- (3) Convey to the child the name and telephone number of his or her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist in challenging the change. Ark. Code Ann. § 9-28-109(c)(2)(A)-(D).

Exceptions to the advance notice requirement shall be made if the child's health or welfare would be endangered by delaying a change in placement, or the child is placed

in a placement intended to be temporary until a stable placement can be located for the child in accordance with DHS policy. Ark. Code Ann. § 9-28-109(d)(1).

Within twenty-four (24) hours of the change in placement, the department shall notify the birth parent of the change, notify the child's attorney ad litem of the change, and provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.

Within seventy-two (72) hours of the change in placement, the department shall provide written notice to the attorney ad litem stating the specific reasons justifying the change of placement without advance notice. Ark. Code Ann. § 9-28-109(d)(2)-(3).

If an agent, employee, or contractor of the department fails to comply with this section, an action for violation of this section may be filed by any party to the action against the person who failed to comply with this section, with the assessment of punishment to be determined by the court. Ark. Code Ann. § 9-28-109(e)(1).

If the court finds that the agent, employee, or contractor of the department failed to comply with this section, then the court may order the department or the agent, employee, or contractor to pay all the costs of the proceedings brought under this section. Ark. Code Ann. § 9-28-109(e)(2).

Juvenile Mental Health Screening/Assessment Requirements

When a mental health screening or assessment is provided to the juvenile division of a circuit court, the screening or assessment shall include, but not be limited to, the following:

- (1) The mental health services needed for the juvenile and the juvenile's family, Ark. Code Ann. § 9-27-603(a)(1); and
- (2) The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services. Ark. Code Ann. § 9-27-603(a)(2).
- (3) If the screening or assessment recommends that the juvenile cannot remain safely in his or her home, then the screening or assessment shall state the recommended type of residential treatment or inpatient treatment that is needed for the juvenile that:
 - (A) Meets the treatment needs of the juvenile;
 - (B) Allows the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the treatment plan;
 - (C) Provides for the least restrictive placement ensuring the health and safety of the juvenile;

- (D) Provides an anticipated length of time needed for residential or inpatient treatment; and
- (E) Provides a plan for the reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from residential or inpatient treatment. Ark. Code Ann. § 9-27-603(b).

Mental Health Assessments Required for Out-of-State Residential Placements

Prior to the circuit court's ordering a juvenile to an out-of-state residential placement, excluding border state placements as defined by Medicaid, the court shall refer a juvenile for an assessment by the DHS or the department's designee to include, but not be limited to: Ark. Code Ann. § 9-27-602(a).

An assessment of the mental health services for the juvenile and the juvenile's family; Ark. Code Ann. § 9-27-602(a)(1)(A).

If the assessment recommends that the juvenile cannot remain at home, all appropriate in-state placements currently available that are appropriate to meet the juvenile's mental health needs shall be presented to the court:

- (1) With a preference for the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the family treatment plan;
- (2) That provide for the least restrictive placement ensuring the health and safety of the juvenile;
- (3) That provide an anticipated length of time needed for residential or inpatient treatment; and
- (4) That provide a plan for reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from treatment; Ark. Code Ann. § 9-27-602(a)(1)(B).

The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services. Ark. Code Ann. § 9-27-602(a)(2)(A).

If the assessment recommends that the juvenile cannot be served in the State of Arkansas, the assessment shall:

- (1) Specify the reasons why the juvenile cannot be served in the state; and
- (2) Recommend what type of placement the child needs out of state and the reasons for such a recommendation. Ark. Code Ann. § 9-27-602(a)(2)(B).

The department or its designee shall complete the out-of-state mental health assessment within five (5) business days of referral from the court. Ark. Code Ann. § 9-27-602(b).

The assessment completed by the department or its designee shall be admitted into evidence, and the court shall consider the assessment in making its determination as to what services and placement should be ordered based on the best interest of the juvenile. Ark. Code Ann. § 9-27-602(c).

The court shall make a determination of the ability of the parent, guardian, or custodian of the juvenile to pay in whole or in part for mental health services. Ark. Code Ann. § 9-27-602(d)(1).

If the court determines an ability to pay, the court shall enter such an order for payment, pursuant to Arkansas Code Annotated section 9-27-333(e). Ark. Code Ann. § 9-27-602(d)(2).

Emancipation of Juveniles

A petition for emancipation may be filed by an party in a dependency-neglect, dependency, family-in-need-of-services (FINS), or delinquency case. Ark. Code Ann. § 9-27-362(a).

The petition shall be served along with a notice of hearing to the juvenile's parent, legal guardian, or legal custodian. Ark. Code Ann. § 9-27-362(b).

The circuit court may emancipate a juvenile in a dependency-neglect, dependency, family-in-need-of-services case, or delinquency case after a hearing on the petition if the petitioner shows by a preponderance of the evidence that:

- (1) The juvenile is at least seventeen (17) years of age;
- (2) The juvenile is willing to live separate and apart from his or her parent, legal guardian, or legal custodian;
- (3) The juvenile has an appropriate place to live;
- (4) The juvenile has been managing or has the ability to manage his or her own financial affairs;
- (5) The juvenile has a legal source of income, such as employment or a trust fund;
- (6) The juvenile has health care coverage or a realistic plan on how to meet his or her health needs;
- (7) The juvenile agrees to comply with the compulsory school attendance laws; and

- (8) Emancipation is in the best interest of the juvenile. Ark. Code Ann. § 9-27-362(c)-(d)(1).

The court shall consider:

- (1) The wishes of the parent, legal guardian, or legal custodian in making its decision.
- (2) The recommendation of the attorney ad litem. Ark. Code Ann. § 9-27-362(d)(2)-(3).

Effect of an Order of Emancipation

The juvenile has the right to obtain and consent to all medical care, including counseling;

The juvenile has the right to enter into contracts;

The juvenile has the right to enroll himself or herself in school, college, or other educational programs;

The juvenile has the right to obtain a driver's license without consent of a parent or other adult so long as the juvenile complies with the remaining requirements of the driver's license law;

The juvenile's parent, legal guardian, or legal custodian is no longer legally responsible for the juvenile;

The juvenile may still be charged with a delinquency and prosecuted in juvenile court;

The juvenile may not marry without parental permission pursuant to Arkansas Code Annotated section 9-11-102;

The juvenile is not relieved from compulsory school attendance;

DHS is not relieved from the responsibility of providing independent living services and funding for which the juvenile is eligible upon request by the juvenile;

Child support orders are not terminated but may cease upon entry of an order from the court that issued the order of child support;

Until the juvenile reaches the age of majority, the juvenile remains eligible for federal programs and services as a juvenile;

The juvenile is not permitted to obtain items prohibited for sale to or possession by a minor, such as tobacco or alcohol;

The juvenile remains subject to state and federal laws enacted for the protection of persons under eighteen (18) years of age such as the prohibition against a juvenile's obtaining a tattoo; and

No statute of limitations is affected. Ark. Code Ann. § 9-27-362(e).

Index

- 72-Hour Hold, 75
- Abandoned Infant (Definition of), 15
- Abandonment (Definition of), 14
- Abuse (Definition of), 15
- Adjudication Hearings, 93
- Administrative Order No. 14, 23
- Admissibility of Evidence, 76
- Adoption (Jurisdiction Over), 21
- Adoption Safe Families Act (ASFA), 147
- Adoption Safe Families Act (ASFA) - 60
 - Day Findings, 182
- Adoption Safe Families Act (ASFA) Initial Removal Finding, 170
- Adoption Safe Families Act (ASFA)
 - Reasonable Efforts Findings, 205
- Aftercare Plans, 124
- Americans with Disabilities Act
 - Accommodations (Dependency-Neglect), 260
- Appeal - Time Constraints, 274
- Appeal of Transfer Order, 91
- Appeals\, 272
- Appointed Counsel, 43
- Arkansas Supreme Court Administrative Order No. 14, 23
- Attorney Fees and Payment, 49
- Attorneys' Fees, 283
- Brady Violations, 99
- Burdens of Proof, 73
- CASA, 45
- Case Plan Contents for In-Home Services, 58
- Case Plan Contents for Out-of-Home Placement Services, 58
- Case Plans, 57
- Case Transfers, 30
- Circuit Court Jurisdiction, 7
- Circuit Court Juvenile Division Fund, 285
- Closed Hearings, 73
- Court Appointed Special Advocate (CASA XE "CASA"), 45
- Court Costs, 283
- Court Personnel, 1
- Curfew Violations, 25
- Custodial Parents Rights, 74
- Custodial Statements, 33
- Custody, 31
 - Custody of Alleged Delinquent Juvenile, 31
 - Custody of Alleged Dependent-Neglected Juvenile, 37
 - Custody of Alleged Felony, 32
 - Custody of Alleged FINS, 38
 - Custody of Alleged Misdemeanor, 33
 - Custody Restrictions, 33
 - Defenses, 76
 - Defenses Available, 97
 - Delinquency Appeals, 272
 - Delinquency Case Law, 99
 - Delinquency Disposition Alternatives, 108
 - Delinquency Disposition for Escape
 - Adjudications, 118
 - Delinquency Dispositions, 107
 - Delinquency Dispositions for Weapon
 - Adjudications, 118
 - Delinquency Proceedings, 81
 - Dependency-Neglect - Failure to Remedy, 233
 - Dependency-Neglect Adjudication Hearings, 170
 - Dependency-Neglect Appeals, 274
 - Dependency-Neglect Disposition Alternatives, 182
 - Dependency-Neglect Disposition Hearings, 181
 - Dependency-Neglect Fifteenth-Month Review Hearing, 206
 - Dependency-Neglect Probable Cause Hearings, 166
 - Dependency-Neglect Proceedings, 166
 - Dependency-Neglect Requirements Prior to Removing a Juvenile from Home, 186
 - Dependency-Neglect Six-Month Review Hearings, 193
 - Dependency-Neglect Transfer of Custody, 188
 - Dependent juvenile definition, 20, 75, 143, 166
 - Dependent-Neglected Juveniles (Jurisdiction Over), 13
 - Dependent-Neglected Juveniles' Right to Counsel, 44
 - Detention, 66, 117
 - Detention Hearings, 81
 - Detention Limitations, 66

Detention of FINS - Limitations, 39
 DHS Case Plans, 57
 DHS Custody (Jurisdiction Over), 21
 DHS Custody Solely Because of Actions of
 Someone Other than Custodial Parent, 39
 District Court Jurisdiction of Juveniles, 25
 Diversion, 62
 Diversion Fee, 63, 283
 DNA Samples, 98
 Double Jeopardy, 76
 Drug Testing, 77
 DWIs, 25
 DYS Aftercare Revocation Hearings, 124
 DYS Commitment, 109
 Educational Rights of Foster Children, 289
 Effect of an Order of Emancipation, 295
 EJJ Adjudication & Disposition Hearings,
 138
 EJJ Court Review Hearing, 139
 EJJ Designation, 127
 EJJ Designation Appeal, 137
 EJJ Designation Hearing, 135
 EJJ Fitness to Proceed, 129
 EJJ Jury Trial, 138
 EJJ Offenders' Right to Counsel, 43
 EJJ Proceedings, 127
 EJJ Records, 142
 EJJ Right to Counsel, 129
 Electronic Monitoring, 117
 Emancipation of Juveniles, 294
 Emergency Custody/72-Hour Hold
 (Jurisdiction over), 21
 Emergency Ex Parte Orders, 40
 Emergency FINS removal, 143
 Escape Adjudications, 118
 Evaluation Orders, 112
 Extended Jurisdiction Juveniles
 (Jurisdiction Over), 11
 Extended Juvenile Jurisdiction
 Proceedings, 127
 Family In Need of Services, 143
 Family in Need of Services (Jurisdiction
 Over FINS), 12
 Family Services - Cost of, 284
 Federal IV-E Adoption Safe Families Act
 (ASFA) Initial Removal Finding, 170
 Federal IV-E Findings, 42
 Fees, 283
 Fines, 283, 287
 Fingerprinting & Photographing, 36
 FINS, 143
 FINS Adjudication Hearings, 149
 FINS Custody Options, 38
 FINS Detention, 67
 FINS Disposition Alternatives, 150
 FINS Disposition Hearings, 150
 FINS' Right to Counsel, 43
 First Amendment Case Law, 100
 Fitness to Proceed, 76, 96
 Foster Care Placements, 291
 Foster Care School Notification, 290
 Foster Parents Rights, 74
 Foster Youth Transition Plan Hearings, 207
 Game & Fish Violations, 25
 Grandparents - Notice of Hearing, 70
 Guardianship (Jurisdiction Over), 21
 Hearings (Overview), 70
 Home Studies, 77
 Intake Officers, 1
 Interstate Compact Placement of Children
 (ICPC), 77
 Intervention, 27
 Jurisdiction of the Circuit Court, 7
 Juvenile Delinquents' Right to Counsel, 43
 Juvenile Service Fee, 284
 Juvenile Witness, 34
 Kent v. United States, 93
 Mandatory Detention, 31
 Mediation, 79
 Mental Health Assessments Required for
 Out-of-State Residential Placements, 293
 Mental Health Screening/Assessment
 Requirements, 292
 Miranda Rights, 51
 Modification of Conditional Release, 84
 Motions to Transfer, 85
 Neglect (Definition of), 17
 No Merit Petitions, 277
 No Reunification Efforts Hearings, 189
 Nonpayment of Restitution, Fines and
 Court Costs, 287
 Notice, 29
 Notice of Hearing, 70
 Officer Certification Standards, 4
 Officers' Salaries, 5
 Out-of-Home Placements, 282
 Parent Training, 116

Parent's and Guardian's Right to Counsel, 46	Sufficiency of the Evidence Case Law, 101
Permanency Planning Hearing, 197	Suspend Driving Privileges, 118
Permanent Custody (Jurisdiction Over), 22	Termination of Parental Rights (Jurisdiction Over), 21
Petition, Contents Of, 28	Termination of Parental Rights (TPR) Hearing, 210
Petition, Filing Of, 28	Time Constraints - Detention, 66
Petitioners, 26	Time Constraints on Appeal, 274
Post-Termination of Parental Rights Review Hearings, 269	TPR Case Law, 219
Preadoptive Parents Rights, 74	TPR Order - Effect Of, 267
Probation, 112	Traffic Offenses, 25
Probation Fee, 283	Transfer Hearing Constitutional Challenges, 89
Probation Officers, 2	Transfer Hearing Factors, 85
Prosecutor Charging Discretion, 8	Transfer Hearings, 84
Questioning Juveniles, 34	Transfer of Legal Custody, 108
Relatives' Rights, 74	Transfer of Venue, 30
Removal from Sex Offender Registry, 122	Trial Counsel's Duties for Appeal, 281
Residential Detention, 117	Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) (Jurisdiction Over), 22
Restitution, 114, 283, 286	Venue, 29
Revocation of Probation Hearings, 122	Waiver of Counsel (By Juvenile), 54
Right to Counsel, 43	Waiver of Counsel (By Parent), 55
Right To Jury, 71	Waiver of Right to Counsel, 51
Sex & Child Offender Assessment, 97	Weapon Adjudications, 118
Sex Offender Registration Hearing, 119	
Sex Offender Registration Hearing Factors, 119	
Sexual abuse (Definition of), 18	